

73 Am. Jur. 2d Statutes VI A Refs.

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VI. Operation and Effect

A. In General

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑3905

West's Key Number Digest, [Statutes](#) 🔑174 to 178, 230, 231

A.L.R. Library

A.L.R. Index, Statutes

West's A.L.R. Digest, Constitutional Law 🔑3905

West's A.L.R. Digest, [Statutes](#) 🔑174 to 178, 230, 231

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73 Am. Jur. 2d Statutes § 231

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VI. Operation and Effect

A. In General

§ 231. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  174 to 178

Where statutory provisions are substantially the same as the common law, they are to be construed as continuations of the common law rather than as new enactments.¹ The only question for the courts where a statutory system is administered is what the statutes prescribe.² The legality of an act not otherwise prohibited is not affected by the fact that it is done with the purpose of evading and circumventing a statute.³ The fact that a statute has remained unenforced for a long period does not render it inoperative.⁴ Moreover, so long as a statute remains in force, the courts must give effect to it although its usefulness has been undermined by judicial decision.⁵

Citizens and public officials are not required to speculate upon the validity of a statute or to act under it at their peril.⁶ On the other hand, the bare legislative reenactment of an unconstitutional statute cannot serve to invest the statute with constitutionality.⁷

CUMULATIVE SUPPLEMENT

Cases:

Due process bars courts from applying a novel construction of a criminal statute to conduct that neither the statute nor any prior judicial decision has fairly disclosed to be within its scope. [U.S.C.A. Const.Amend. 14. State v. Guarnero, 2015 WI 72, 867 N.W.2d 400 \(Wis. 2015\).](#)

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Footnotes

- 1 [Kennedy v. Burnap](#), 120 Cal. 488, 52 P. 843 (1898).
- 2 [Wm. Filene's Sons Co. v. Weed](#), 245 U.S. 597, 38 S. Ct. 211, 62 L. Ed. 497 (1918).
As to courts of equity as bound by the positive provisions of statutes, see [Am. Jur. 2d, Equity §§ 87, 88](#).
- 3 [Newman v. Dore](#), 275 N.Y. 371, 9 N.E.2d 966, 112 A.L.R. 643 (1937).
- 4 § 256.
- 5 [U.S. v. Bryan](#), 339 U.S. 323, 70 S. Ct. 724, 94 L. Ed. 884 (1950).
- 6 [Downs v. Jacobs](#), 272 A.2d 706 (Del. 1970).
As to determination of constitutionality of legislation, see [Am. Jur. 2d, Constitutional Law §§ 107 to 213](#).
- 7 [State ex rel. Munro v. Todd](#), 69 Wash. 2d 209, 417 P.2d 955 (1966), opinion amended on other grounds, 426 P.2d 978 (Wash. 1967).

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73 Am. Jur. 2d Statutes § 232

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VI. Operation and Effect

A. In General

§ 232. Amendments

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  230

When the legislature acts to amend a statute, the courts presume that it intends its amendment to have real and substantial effect.¹ Ordinarily, where an amendment has been adopted to a comprehensive legislative act covering a particular subject, in construing the act thereafter, it will be read as if the amendment had been in it from the beginning.² In this regard, unless a contrary intent is clearly indicated, the amended statute is regarded as if the original statute had been repealed and the whole statute reenacted with the amendment.³ However, insofar as the two acts are the same, the new act is regarded as a mere continuation of the earlier one.⁴

The Uniform Statute and Rule Construction Act provides that a statute that is revised, whether by amendment or by repeal and reenactment, is a continuation of the previous statute and not a new enactment to the extent that it contains substantially the same language as the previous statute,⁵ and as speaking as of the time of the adoption of the original enactment, so that only the new provisions are to be considered as having been enacted at the time of the amendment.⁶

While it is ordinarily assumed that an amendment is intended to change the law as it formerly existed, such assumption is not controlling.⁷ An amendment to a statute merely creates a rebuttable presumption that the amendment was intended to change the law.⁸ It is only if the earlier version of a statute definitely expresses a clear and unambiguous intent or has been judicially interpreted that a legislative amendment is presumed to change the existing law.⁹ When an amendment is passed in the midst of controversy over a provision's meaning, the usual presumption that an amendatory act declares new law is overcome and a legislative intent to clarify rather than to change the law may be inferred.¹⁰

The normal assumption is that where Congress amends only one section of a law, leaving another untouched, the two were designed to function as parts of an integrated whole.¹¹ In accordance with the rule that a statute should be read as a whole as to future transactions, the provisions introduced by an amendatory act should be read together with the provisions of the

original section that are reenacted or left unchanged thereby as if they had been originally enacted as one section.¹² However, the rule that a statute should be read in connection with other statutes pertaining to the same subject matter is applicable to the interpretation of an amendatory act if regarded as a separate act rather than as part of an existing act.¹³

The invalidity of an amendatory act ordinarily leaves the original statute in force.¹⁴

Observation:

When Congress amends one statutory provision but not another, it is presumed to have acted intentionally.¹⁵

CUMULATIVE SUPPLEMENT

Cases:

When Congress acts to amend a statute, courts presume it intends its amendment to have real and substantial effect. [Intel Corporation Investment Policy Committee v. Sulyma](#), 140 S. Ct. 768 (2020).

When Congress amends legislation, courts must presume it intends the change to have real and substantial effect. [Ross v. Blake](#), 136 S. Ct. 1850 (2016).

When Congress acts to amend a statute, courts presume it intends its amendment to have real and substantial effect. [Husky Intern. Electronics, Inc. v. Ritz](#), 136 S. Ct. 1581 (2016).

When Congress acts to amend a statute, the courts presume that Congress intends its amendment to have real and substantial effect. [U.S. v. Quality Stores, Inc.](#), 134 S. Ct. 1395 (2014).

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Footnotes

- 1 [Niagara Mohawk Power Corp. v. Chevron U.S.A., Inc.](#), 596 F.3d 112 (2d Cir. 2010).
- 2 [Detroit Club v. State](#), 309 Mich. 721, 16 N.W.2d 136 (1944); [State ex rel. McGraw v. Combs Services](#), 206 W. Va. 512, 526 S.E.2d 34 (1999).
- 3 [Ford Motor Co. v. State](#), 59 N.D. 792, 231 N.W. 883 (1930).
- 4 [Bingaman v. Golden Eagle Western Lines](#), 297 U.S. 626, 56 S. Ct. 624, 80 L. Ed. 928 (1936); [In re Buck](#), 200 Or. 488, 258 P.2d 124 (1953).
- 5 Unif. Statute and Rule Construction Act § 14.
- 6 [Posadas v. National City Bank of New York](#), 296 U.S. 497, 56 S. Ct. 349, 80 L. Ed. 351 (1936).
- 7 [Corsentino v. Cordova](#), 4 P.3d 1082 (Colo. 2000).

- 8 Miller v. LaSalle Bank Nat. Ass'n, 595 F.3d 782 (7th Cir. 2010).
- 9 Pino v. U.S., 507 F.3d 1233 (10th Cir. 2007), certified question answered, 2008 OK 26, 183 P.3d 1001 (Okla. 2008) (2005 amendment was a clarification and not a change of the law).
- 10 In re Oswalt, 444 F.3d 524, 2006 FED App. 0141P (6th Cir. 2006); Pino v. U.S., 507 F.3d 1233 (10th Cir. 2007), certified question answered, 2008 OK 26, 183 P.3d 1001 (Okla. 2008) (2005 amendment was a clarification and not a change of the law).
- 11 Cody v. Cox, 509 F.3d 606 (D.C. Cir. 2007).
- 12 Com. v. Connor C., 432 Mass. 635, 738 N.E.2d 731 (2000).
- 13 Frkovich v. Petranovich, 48 N.M. 382, 151 P.2d 337, 155 A.L.R. 295 (1944).
- 14 State v. Greenburg, 187 Neb. 149, 187 N.W.2d 751 (1971).
- 15 Gross v. FBL Financial Services, Inc., 557 U.S. 167, 129 S. Ct. 2343, 174 L. Ed. 2d 119 (2009).

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73 Am. Jur. 2d Statutes § 233

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VI. Operation and Effect

A. In General

§ 233. Revisions and codifications

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  231

A.L.R. Library

[Legislative adoption of compiled or revised statutes as giving effect to former repealed or suspended provisions included therein, 12 A.L.R.2d 423](#)

The inclusion of a statute in a code does not operate as a reenactment thereof.¹ An act of the legislature is not void because it attempts to amend a prior act which has been carried into the code, without referring to such codification.² Furthermore, if an act as originally passed was unconstitutional because it contained matter different from that expressed in the title or referred to more than one subject, it becomes valid law if otherwise constitutional on adoption by the legislature and incorporation into a general revision without reference to the title as originally enacted.³ In addition, the efficacy of a statute is not impaired by splitting it up when carrying it into a revision and placing the different sections under appropriate heads.⁴

There is a presumption against change in codification statutes,⁵ and language revisions will not be deemed to alter the meaning of the original statute.⁶ Under established canons of statutory construction, it will not be inferred that Congress, in revising and consolidating the laws, intended to change their effect unless such intention is clearly expressed.⁷ This is true even though, in the course of revision or consolidation, the language of the original sections has been changed in that, ordinarily, the new language will be attributed to a desire to condense and simplify the text and to improve phraseology.⁸

Observation:

A minor, unexplained omission in connection with the general revision of a statute should not be construed as changing a long-standing rule in the absence of a clear manifestation of such intention, particularly where the expressed intention of revision is simply to incorporate and preserve existing powers.⁹

A law listed in the current edition of the United States Code is prima facie evidence of the law of the United States.¹⁰

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Footnotes

- 1 Smiley v. Holm, 285 U.S. 355, 52 S. Ct. 397, 76 L. Ed. 795 (1932).
- 2 Ex parte Thompson, 228 Ala. 113, 152 So. 229, 107 A.L.R. 671 (1933).
- 3 Peterson v. Vasak, 162 Neb. 498, 76 N.W.2d 420 (1956).
- 4 State v. Lewis, 142 N.C. 626, 55 S.E. 600 (1906).
- 5 Doyle v. Huntress, Inc., 419 F.3d 3 (1st Cir. 2005).
- 6 Port Authority of New York and New Jersey v. Department of Transp., 479 F.3d 21 (D.C. Cir. 2007).
- 7 Newton v. F.A.A., 457 F.3d 1133 (10th Cir. 2006).
- 8 Newton v. F.A.A., 457 F.3d 1133 (10th Cir. 2006).
- 9 Brooklyn Union Gas Co. v. Commissioner of Dept. of Finance of City of New York, 67 N.Y.2d 1036, 503 N.Y.S.2d 718, 494 N.E.2d 1383 (1986).
- 10 U.S. v. Ferrand, 284 Fed. Appx. 177 (5th Cir. 2008).

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73 Am. Jur. 2d Statutes § 234

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VI. Operation and Effect

A. In General

§ 234. Vagueness and overbreadth

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑3905

West's Key Number Digest, [Statutes](#) 🔑174 to 178

The void-for-vagueness doctrine is embodied in the Due Process Clauses of the Fifth and 14th Amendments.¹ Generally, the vagueness doctrine bars enforcement of a statute which either forbids or requires the doing of an act in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application.² A statute is unconstitutionally vague if it does not give a person of ordinary intelligence a reasonable opportunity to know what is prohibited.³ Furthermore, it has been said that the appropriate inquiry in determining whether a statute is unconstitutionally vague is whether the statute gives fair warning of proscribed conduct when measured by common understanding and practice.⁴

A statute is overbroad when legal, constitutionally protected activities are criminalized as well as illegal, unprotected activities or when the legislature sets a net large enough to catch all possible offenders and leaves it to the courts to step inside and determine who is being lawfully detained and who should be set free.⁵

However, the objectionable qualities of vagueness and overbreadth do not, in cases involving the freedoms of expression and association protected by the First Amendment, depend upon the absence of fair notice to a criminally accused or upon the unchanneled delegation of legislative powers but upon the danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper applications⁶ leading to a "chilling effect" on these freedoms.⁷

The fact that an act is open to the criticism that it is vague, uncertain, and indefinite in some of its provisions does not render it wholly void so long as it does not infringe some constitutional provision and is capable of execution in its more essential provisions.⁸ However, the uncertain or indefinite portion of a statute may be so essential to or connected with the statute as a whole as to render the entire statute invalid.⁹

CUMULATIVE SUPPLEMENT

Cases:

Two independent grounds exist for finding a statute impermissibly vague: the first arises if the statute fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits; the second arises when the statute authorizes or even encourages arbitrary and discriminatory enforcement. [Arrigoni Enterprises, LLC v. Town of Durham](#), 18 F. Supp. 3d 188 (D. Conn. 2014).

Before striking a federal statute as impermissibly vague, courts consider whether the prescription is amenable to a limiting construction. [Welch v. U.S.](#), 136 S. Ct. 1257 (2016).

When the terms of a regulation are clear and not subject to attack for vagueness, the plaintiff bears a high burden to show that the standards used by officials enforcing the statute nevertheless give rise to a vagueness challenge. [Kolbe v. O'Malley](#), 42 F. Supp. 3d 768 (D. Md. 2014).

In examining the sufficiency of statutory language, objective quantification, mathematical certainty, and absolute precision are not required. [In re Guardianship of Chamberlain](#), 2015 ME 76, 118 A.3d 229 (Me. 2015).

When asserting that a statute is unconstitutional because it is void for vagueness, the challenging party must show that, after an examination of the statute, a person of ordinary intelligence would not be able to understand what he or she is required to do under the law. [State v. Jacobs](#), 2013-Ohio-3797, 995 N.E.2d 1247 (Ohio Ct. App. 9th Dist. Summit County 2013).

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Footnotes

- 1 [Am. Jur. 2d, Constitutional Law § 972.](#)
- 2 [U.S. v. Lanier](#), 520 U.S. 259, 117 S. Ct. 1219, 137 L. Ed. 2d 432 (1997); [U.S. v. Barnes](#), 295 F.3d 1354 (D.C. Cir. 2002); [Behar v. Pennsylvania Dept. of Transp.](#), 791 F. Supp. 2d 383 (M.D. Pa. 2011).
- 3 [Groome Resources Ltd., L.L.C. v. Parish of Jefferson](#), 234 F.3d 192 (5th Cir. 2000).
A statute will be considered unconstitutionally vague on its face only where it is incapable of any valid application in the sense that no standard of conduct is specified at all. [People v. Burpo](#), 164 Ill. 2d 261, 207 Ill. Dec. 503, 647 N.E.2d 996 (1995).
- 4 [Abbott v. Kansas Bd. of Examiners in Optometry](#), 268 Kan. 739, 1 P.3d 318 (2000).
A statute can be impermissibly vague if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. [Fairchild v. Liberty Independent School Dist.](#), 597 F.3d 747, 254 Ed. Law Rep. 503 (5th Cir. 2010).
As to the requirements of certainty and definiteness in the declaration of criminal offenses, generally, see [Am. Jur. 2d, Criminal Law §§ 15 to 18.](#)
- 5 [Schantz v. State](#), 361 So. 2d 416 (Fla. 1978).
- 6 [National Ass'n for Advancement of Colored People v. Button](#), 371 U.S. 415, 83 S. Ct. 328, 9 L. Ed. 2d 405 (1963).
- 7 [Dombrowski v. Pfister](#), 380 U.S. 479, 85 S. Ct. 1116, 14 L. Ed. 2d 22 (1965).
- 8 [Collier v. U.S.](#), 283 F.2d 780 (4th Cir. 1960).
- 9 [Broadrick v. Oklahoma](#), 413 U.S. 601, 93 S. Ct. 2908, 37 L. Ed. 2d 830 (1973).

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73 Am. Jur. 2d Statutes VI B Refs.

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.


VI. Operation and Effect

B. Prospective or Retrospective Operation

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  250, 278.1, 278.2, 278.5 to 278.11, 278.13, 278.14, 278.16, 278.17

A.L.R. Library

A.L.R. Index, Retroactive Operation

A.L.R. Index, Retrospective Laws

A.L.R. Index, Statutes

West's A.L.R. Digest, [Statutes](#)  250, 278.1, 278.2, 278.5 to 278.11, 278.13, 278.14, 278.16, 278.17

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73 Am. Jur. 2d Statutes § 235

American Jurisprudence, Second Edition | May 2021 Update

Statutes

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VI. Operation and Effect

B. Prospective or Retrospective Operation

§ 235. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  278.1, 278.2, 278.5, 278.8 to 278.10

A.L.R. Library

[Retrospective application and effect of state statute or rule allowing interest or changing rate of interest on judgments or verdicts, 41 A.L.R.4th 694](#)

[Validity and construction of state statute or rule allowing or changing rate of prejudgment interest in tort actions, 40 A.L.R.4th 147](#)

[Retrospective application of state statute substituting rule of comparative negligence for that of contributory negligence, 37 A.L.R.3d 1438](#)

[Retrospective operation of state statutes or rules of court conferring in personam jurisdiction over nonresidents or foreign corporations on the basis of isolated acts or transactions, 19 A.L.R.3d 138](#)

[Retroactive effect on appeal from judgment previously entered of statute shortening time allowed for appellate review, 81 A.L.R.2d 417](#)

[Retroactive operation and effect of venue statute, 41 A.L.R.2d 798](#)

[Retrospective application of statutes relating to trust investments, 35 A.L.R.2d 991](#)

[Retrospective operation of legislation affecting estates by the entireties, 27 A.L.R.2d 868](#)

In the absence of an express constitutional inhibition, retrospective laws are not prohibited as such. Such laws cannot be held invalid unless they violate some other constitutional provision, such as the provisions relating to due process, equal protection of the laws, impairment of contractual obligations, or ex post facto laws. As a general rule of statutory construction, no provision of a statute will be construed so as to give it a retroactive effect unless such intent clearly appears from the act itself. Even

then, legislative intent alone is not sufficient to require the retroactive application of a statute since the retroactive application must also pass constitutional muster.¹

Generally, a statute is retroactive if it substantially changes the legal effect of past events.² In this regard, a "retrospective" statute is one which affects rights, obligations, acts, transactions, and conditions which are performed or exist prior to the adoption of the statute.³ However, a statute is not regarded as operating retroactively because of the mere fact that it relates to antecedent events.⁴

The law disfavors retroactivity,⁵ and as a general rule, statutes are to be applied prospectively.⁶ The court is to apply the law in effect at the time that it renders its decision unless doing so would result in manifest injustice, or there is statutory direction or legislative history to the contrary.⁷ However, Congress has the power to enact laws with retrospective effect,⁸ and the retroactive application of a statute is not necessarily unconstitutional.⁹ A statute may apply retroactively if there is a clear and compelling implication that the legislature intended such a result.¹⁰ When it is not clear whether a statute is meant to apply retrospectively, prospectivity remains the appropriate default rule.¹¹

Changes in the law will not be applied retroactively when the result would be that new and unanticipated obligations may be imposed upon a party without notice or an opportunity to be heard;¹² a statute will not be applied retroactively if doing so interferes with vested, substantive rights.¹³ That is, a new law will not apply if it would take away or impair vested rights acquired under existing laws or create a new obligation, impose a new duty, or attach a new disability in respect to transactions already completed.¹⁴ The essential inquiry, in deciding whether a statute can be applied retroactively absent some clear manifestation that this was the intent of Congress, is whether the statute attaches new legal consequences to events completed before its enactment.¹⁵ Although not a necessary predicate for invoking the antiretroactivity principle, the likelihood of reliance on prior law strengthens the case for reading a newly enacted law prospectively.¹⁶

A judgment bearing on retroactivity should be guided by fair notice, reasonable reliance, and settled expectations¹⁷ since elementary considerations of fairness dictate that individuals should have the opportunity to know what the law is and to conform their conduct accordingly.¹⁸ In determining whether the attachment of new legal consequences to past actions conflicts with such considerations, the courts require that reliance on the prior law would have been objectively reasonable under the party's circumstances.¹⁹ Although evidence of a guilty plea or other quid pro quo exchange that could reasonably have been made in reliance on an old law is not the exclusive method of proving reliance, it is sufficient.²⁰

CUMULATIVE SUPPLEMENT

Cases:

In determining whether a statute applies retroactively, if Congress has not expressly prescribed the statute's reach, the court must examine whether the statute would have a retroactive effect; that is, whether it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed. [Abarca v. Little, 54 F. Supp. 3d 1064 \(D. Minn. 2014\)](#).

Generally, retrospective application of a statute is not favored, absent an express statutory provision or clear legislative intent that the enactment apply retroactively as well as prospectively. [Alabama Ins. Guar. Ass'n v. Mercy Medical Ass'n, 120 So. 3d 1063 \(Ala. 2013\)](#).

Statute providing that no part of the Penal Code is retroactive unless expressly so declared erects a strong presumption of prospective operation, codifying the principle that, in the absence of an express retroactivity provision, a statute will not be applied retroactively unless it is very clear from extrinsic sources that the Legislature must have intended a retroactive application. [West's Ann.Cal.C.C.P. § 3](#). [People v. Brown](#), 54 Cal. 4th 314, 142 Cal. Rptr. 3d 824, 278 P.3d 1182 (2012).

Proposition 57, the Public Safety and Rehabilitation Act of 2016, which essentially eliminated the ability to initiate criminal cases against juvenile offenders anywhere but in juvenile court and removed the presumption of unfitness that previously attached to the alleged commission of certain offenses, did not apply retroactively to defendant who was charged, tried, convicted, and sentenced before the Act's effective date, but whose case was not yet final on appeal; Proposition 57 did not contain any retroactivity provision, and thus there was a presumption of prospective-only application, and Proposition 57 did not mitigate the penalty for any particular criminal offense. [People v. Brewer](#), 17 Cal. App. 5th 471, 225 Cal. Rptr. 3d 623 (5th Dist. 2017).

Fundamental rule of statutory construction is to construe statutes to have prospective rather than retroactive effect. [Guzman v. Piercy](#), 318 P.3d 918 (Idaho 2014).

An amended statute which creates new requirements to be imposed in the present or future, and not in the past, does not have a retroactive impact on the parties. [International Union of Operating Engineers Local 965 v. Illinois Labor Relations Bd., State Panel](#), 391 Ill. Dec. 553, 30 N.E.3d 1191 (App. Ct. 4th Dist. 2015).

The mere fact that some persons were at some later date governed by a law more favorable to them than the law which applied to defendant is insufficient to strike down an otherwise valid statute; to hold the opposite would be either to eradicate all new statutes or to make them all retroactive. [Com. v. Galvin](#), 466 Mass. 286, 995 N.E.2d 27 (2013).

Whether a statute is to be applied to events occurring prior to the date on which it took effect is in the first instance a question of legislative intent. [Smith v. Massachusetts Bay Transp. Authority](#), 462 Mass. 370, 968 N.E.2d 884 (2012).

Statutes covering substantive matters in effect at the time of the transaction or event govern, not later enacted statutes. [Smith v. Mark Chrisman Trucking, Inc.](#), 285 Neb. 826, 829 N.W.2d 717 (2013).

Where a statute does not expressly address the issue of retroactivity, the reach of the statute ultimately becomes a matter of judgment made upon review of the legislative goal and factors such as whether the Legislature has made a specific pronouncement about retroactive effect or conveyed a sense of urgency, whether the statute was designed to rewrite an unintended judicial interpretation, and whether the enactment itself reaffirms a legislative judgment about what the law in question should be, where applicable. [Nuara v. State of New York Workers' Compensation Bd.](#), 979 N.Y.S.2d 453 (Sup 2010).

In determining whether a statute affects the substantive rights of the parties, for the purposes of determining whether it has retroactive effect, the court must consider whether the statute increases or diminishes the amount of recoverable compensation or alters the elements of the claim or defense by imposition of new conditions; if the answer to that question is yes, then the law mandates prospective application of the law regardless of the statutory language that it applies retroactively. [Hillcrest Medical Center v. Powell](#), 2013 OK 1, 295 P.3d 13 (Okla. 2013).

For purposes of rule that a statute may not be applied retroactively to infringe a vested right, a "vested right" is more than a mere expectation. [In re Estate of Haviland](#), 177 Wash. 2d 68, 301 P.3d 31 (2013).

A law is not retroactive merely because part of the factual situation to which it is applied occurred prior to its enactment; only when it operates upon transactions which have been completed or upon rights which have been acquired or upon obligations which have existed prior to its passage can it be considered to be retroactive in application. [In re Petition For Attorney Fees And Costs](#), 766 S.E.2d 432 (W. Va. 2014).

[END OF SUPPLEMENT]

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Footnotes

- 1 Am. Jur. 2d, Constitutional Law § 736.
- 2 Ward v. Dixie Nat. Life Ins. Co., 595 F.3d 164, 68 A.L.R.6th 709 (4th Cir. 2010); In re Guardianship of Ann S., 45 Cal. 4th 1110, 90 Cal. Rptr. 3d 701, 202 P.3d 1089 (2009).
- 3 Strauss v. Horton, 46 Cal. 4th 364, 93 Cal. Rptr. 3d 591, 207 P.3d 48 (2009), as modified, (June 17, 2009).
- 4 U.S. v. Irvine, 511 U.S. 224, 114 S. Ct. 1473, 128 L. Ed. 2d 168 (1994); Hughes v. Board of Architectural Examiners, 17 Cal. 4th 763, 72 Cal. Rptr. 2d 624, 952 P.2d 641 (1998).
- 5 Ward v. Dixie Nat. Life Ins. Co., 595 F.3d 164, 68 A.L.R.6th 709 (4th Cir. 2010).
- 6 Vartelas v. Holder, 132 S. Ct. 1479 (2012); In re Lussier, 161 N.H. 153, 13 A.3d 282 (2010); Oberhand v. Director, Div. of Taxation, 193 N.J. 558, 940 A.2d 1202 (2008).
- 7 In re Seven Fields Development Corp., 505 F.3d 237 (3d Cir. 2007).
- 8 Peralta v. Gonzales, 441 F.3d 23 (1st Cir. 2006).
- 9 Greystone Const., Inc. v. National Fire & Marine Ins. Co., 661 F.3d 1272 (10th Cir. 2011).
- 10 People v. Alford, 42 Cal. 4th 749, 68 Cal. Rptr. 3d 310, 171 P.3d 32 (2007); U.S. v. Juvenile Male, 2011 MT 104, 360 Mont. 317, 255 P.3d 110 (2011).
- 11 Killingsworth v. HSBC Bank Nevada, N.A., 507 F.3d 614 (7th Cir. 2007).
A statute that is ambiguous as to retroactivity will be construed as unambiguously prospective. Gadda v. State Bar of Cal., 511 F.3d 933 (9th Cir. 2007).
- 12 Castellanos-Contreras v. Decatur Hotels, LLC, 622 F.3d 393 (5th Cir. 2010).
- 13 Kelly v. VinZant, 287 Kan. 509, 197 P.3d 803 (2008); Bereano v. State Ethics Com'n, 403 Md. 716, 944 A.2d 538 (2008); State v. Ferguson, 120 Ohio St. 3d 7, 2008-Ohio-4824, 896 N.E.2d 110 (2008) (if a statute that is intended to be applied retroactively affects a substantive right, then it offends the constitution).
- 14 Fernandez-Vargas v. Gonzales, 548 U.S. 30, 126 S. Ct. 2422, 165 L. Ed. 2d 323 (2006); Mejia v. Gonzales, 499 F.3d 991 (9th Cir. 2007); Groch v. Gen. Motors Corp., 117 Ohio St. 3d 192, 2008-Ohio-546, 883 N.E.2d 377 (2008).
Statutes authorizing punitive and compensatory damages create new liabilities, and may not be imposed retroactively absent clear congressional intent. Ditullio v. Boehm, 662 F.3d 1091 (9th Cir. 2011).
- 15 Vartelas v. Holder, 132 S. Ct. 1479 (2012).
- 16 Vartelas v. Holder, 132 S. Ct. 1479 (2012).
- 17 Mejia v. Gonzales, 499 F.3d 991 (9th Cir. 2007).
Reliance on existing law by the affected party and the unfairness of changing that law are the important factors in making the retroactivity decision; in evaluating those factors, a court must weigh the public interest in the retroactive application of the statute against the affected party's reliance on previous law, and the consequences of that reliance. Oberhand v. Director, Div. of Taxation, 193 N.J. 558, 940 A.2d 1202 (2008).
- 18 Singh v. Napolitano, 649 F.3d 899 (9th Cir. 2011).
- 19 Camins v. Gonzales, 500 F.3d 872 (9th Cir. 2007).
- 20 Camins v. Gonzales, 500 F.3d 872 (9th Cir. 2007).

End of Document

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73 Am. Jur. 2d Statutes § 236

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.


VI. Operation and Effect

B. Prospective or Retrospective Operation

§ 236. Express provisions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  250, 278.7

Outside of the context of criminal statutes, legislatures are generally free to impart retroactivity upon statutes through the use of express provisions.¹ However, statutes are to be given prospective effect only unless the legislature has unambiguously and unequivocally intended retroactive effect as well.²

To overcome the presumption against retroactivity, a legislature must clearly demonstrate an intent to apply the statute retroactively.³ A statute will not be given retroactive effect unless such construction is required by explicit language or by necessary implication.⁴ This standard is high, requiring an expression of legislative intent that is obvious from the statute's text.⁵ The court's inquiry is not limited to the statutory text but may include an examination of standard ensigns of statutory construction, such as the statute's structure and legislative history.⁶ However, usually, legislative history is an insufficient indicia of intent, and courts instead demand express words evincing an intent that it be retroactive or words necessarily implying such an intent.⁷ The words used in the statute must be so clear, strong, and imperative that no other meaning can be annexed to them, or the intention of the legislature must be such that it cannot be otherwise satisfied.⁸ In general, courts will apply a statute retroactively only if that result is so clearly compelled as to leave no room for reasonable doubt and will refuse to apply a statute retroactively absent statutory language so clear that it could sustain only one interpretation.⁹

Courts will not apply a statute retroactively despite a clear legislative intent that a statute is intended to apply retroactively if retroactive application would be unconstitutional.¹⁰

The inclusion of an effective date is inconsistent with legislative intent to apply the statute retroactively.¹¹ Indeed, a statement that a statute will become effective on a certain date does not even arguably suggest that it has any application to conduct that occurred at an earlier date.¹²

The word "shall" typically suggests that the legislature designed the statute to apply only prospectively; the use of the future tense effectually negatives any suggestion that the statute was intended to apply retroactively.¹³

CUMULATIVE SUPPLEMENT

Cases:

Generally, courts apply statutes prospectively unless the legislature clearly manifests an intent for retroactive application or the statute's purpose cannot otherwise be satisfied. [Holdaway-Foster v. Brunell](#), 330 P.3d 471, 130 Nev. Adv. Op. No. 51 (Nev. 2014).

Generally, unless a contrary Congressional intent is shown, statutes are applied only prospectively, and not retroactively. [In re Brunson](#), 486 B.R. 759 (Bankr. N.D. Tex. 2013).

Statute is not applied retroactively unless there is clear legislative intent to that effect; however, legislature does not need to use the words, "this statute is to be deemed retroactive." West's I.C.A. § 73–101. [Guzman v. Piercy](#), 318 P.3d 918 (Idaho 2014).

Where the Legislature has expressly stated that the statute should be applied retroactively, courts follow the legislative directive. [Sliney v. Previte](#), 41 N.E.3d 732 (Mass. 2015).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Greene v. U.S.](#), 440 F.3d 1304 (Fed. Cir. 2006); [Oberhand v. Director, Div. of Taxation](#), 193 N.J. 558, 940 A.2d 1202 (2008).
- 2 [Izaak Walton League of America v. Lake County Property Tax Assessment Bd. of Appeals](#), 881 N.E.2d 737 (Ind. Tax Ct. 2008); [Kelly v. VinZant](#), 287 Kan. 509, 197 P.3d 803 (2008).
- 3 [Ward v. Dixie Nat. Life Ins. Co.](#), 595 F.3d 164, 68 A.L.R.6th 709 (4th Cir. 2010); [Smith v. Guest](#), 16 A.3d 920 (Del. 2011).
Requiring clear intent that a statute applies retroactively assures that Congress itself has affirmatively considered the potential unfairness of a retroactive application and determined that it is an acceptable price to pay for the countervailing benefits. [AT & T Corp. v. Hulteen](#), 556 U.S. 701, 129 S. Ct. 1962, 173 L. Ed. 2d 898 (2009).
As to presumption against retroactivity, see § 237.
- 4 [Fernandez-Vargas v. Gonzales](#), 548 U.S. 30, 126 S. Ct. 2422, 165 L. Ed. 2d 323 (2006).
- 5 [Ward v. Dixie Nat. Life Ins. Co.](#), 595 F.3d 164, 68 A.L.R.6th 709 (4th Cir. 2010).
- 6 [Peralta v. Gonzales](#), 441 F.3d 23 (1st Cir. 2006).
- 7 [Ward v. Dixie Nat. Life Ins. Co.](#), 595 F.3d 164, 68 A.L.R.6th 709 (4th Cir. 2010).
An ambiguous statement in a senate report on the need for action does not amount to the clear intent required to invoke retroactivity. [U.S. v. Husted](#), 545 F.3d 1240 (10th Cir. 2008).
- 8 [Ward v. Dixie Nat. Life Ins. Co.](#), 595 F.3d 164, 68 A.L.R.6th 709 (4th Cir. 2010).
- 9 [Ward v. Dixie Nat. Life Ins. Co.](#), 595 F.3d 164, 68 A.L.R.6th 709 (4th Cir. 2010).

- 10 Oberhand v. Director, Div. of Taxation, 193 N.J. 558, 940 A.2d 1202 (2008).
11 Ward v. Dixie Nat. Life Ins. Co., 595 F.3d 164, 68 A.L.R.6th 709 (4th Cir. 2010).
12 Ward v. Dixie Nat. Life Ins. Co., 595 F.3d 164, 68 A.L.R.6th 709 (4th Cir. 2010).
13 Ward v. Dixie Nat. Life Ins. Co., 595 F.3d 164, 68 A.L.R.6th 709 (4th Cir. 2010).
 A statute's undeviating use of the present tense is a striking indicator of its prospective orientation. [Carr v.](#)
 U.S., 130 S. Ct. 2229, 176 L. Ed. 2d 1152 (2010).

End of Document

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73 Am. Jur. 2d Statutes § 237

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VI. Operation and Effect

B. Prospective or Retrospective Operation

§ 237. Presumptions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  278.6

A statute dealing with substantive rights should presumptively be given prospective application.¹ Both federal and state courts employ a robust presumption against statutory retroactivity.² Under this presumption, courts assume that statutes operate prospectively only to govern future conduct and actions and do not operate retroactively to reach conduct and claims arising before the statute's enactment.³ If a statutory provision would operate retroactively as applied to cases pending at the time that the provision was enacted, then there is a presumption that it does not govern, absent clear congressional intent favoring such a result.⁴ Since legislatures generally intend statutes to apply prospectively only, this rule of statutory construction is a means of giving effect to legislative intent.⁵

Observation:

Although only a presumption, the presumption against retroactive legislation is deeply rooted in our jurisprudence and embodies a legal doctrine centuries older than our Republic. It has been described as "among the most venerable of the judicial default rules," a "time-honored presumption," and a "rule of general application."⁶

When determining whether the presumption against retroactivity bars the application of a statute in a given case, courts perform a three-step analysis.⁷ First, a court must determine whether the legislature has expressly prescribed the statute's proper reach. If so, there is no need to resort to judicial default rules, and hence, the presumption against retroactivity does not apply.⁸ For example, the legislature may avoid triggering the presumption against retroactivity by including an explicit provision that the statute governs lawsuits already initiated prior to its enactment.⁹ However, if the legislature has not prescribed the statute's reach, a court must move to step two and determine whether the new statute would have a retroactive effect if applied to the case at hand.¹⁰ If not, the presumption against retroactivity again has no application, but if it does, the presumption is triggered, and the court must then inquire under the third step whether the presumption is overcome with clear congressional intent in favor of retroactivity.¹¹

The determination of whether the legislature has expressly prescribed the statute's proper reach focuses on whether the legislature has expressly prescribed the statute's temporal reach, not merely its substantive reach.¹² Thus, if a legislature wishes to avoid triggering the presumption against retroactivity, it may not merely apply the statute to an expansive category of cases. It must instead expressly not limit the statute's temporal reach.¹³

Caution:

A law that merely upsets expectations based in prior law does not trigger the presumption against retroactivity.¹⁴

CUMULATIVE SUPPLEMENT

Cases:

If a court finds that retrospective application of a new law would have a retroactive impact or result in inequitable consequences, the court must presume that the legislature did not intend that it be so applied. [People ex rel. Madigan v. J.T. Einoder, Inc., 2015 IL 117193, 390 Ill. Dec. 105, 28 N.E.3d 758 \(Ill. 2015\)](#).

The presumption of prospective application of a newly enacted penal statute is inconsistent with the manifest intent of the law-making body, such that the newly enacted penal statute may be applied retroactively, where there is a clearly expressed intention of the legislature that the new statute apply retroactively. [Com. v. Bradley, 466 Mass. 551, 998 N.E.2d 774 \(2013\)](#).

Absent clear legislative intent to the contrary, court generally presumes that a statute applies only prospectively. [Waddoups v. Noorda, 2013 UT 64, 321 P.3d 1108 \(Utah 2013\)](#).

[END OF SUPPLEMENT]

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Footnotes

- 1 Sexton v. Boyz Farms, Inc., 780 F. Supp. 2d 361 (D.N.J. 2011); People v. Alford, 42 Cal. 4th 749, 68 Cal. Rptr. 3d 310, 171 P.3d 32 (2007); Department of Transp. v. Gypsum Ranch Co., LLC, 244 P.3d 127 (Colo. 2010); Bionetics Corp. v. Kenniasty, 69 So. 3d 943 (Fla. 2011), cert. denied, 132 S. Ct. 848, 181 L. Ed. 2d 563 (2011).
- 2 Ward v. Dixie Nat. Life Ins. Co., 595 F.3d 164, 68 A.L.R.6th 709 (4th Cir. 2010).
- 3 Ward v. Dixie Nat. Life Ins. Co., 595 F.3d 164, 68 A.L.R.6th 709 (4th Cir. 2010).
- 4 Hamdan v. Rumsfeld, 548 U.S. 557, 126 S. Ct. 2749, 165 L. Ed. 2d 723 (2006).
- 5 Ward v. Dixie Nat. Life Ins. Co., 595 F.3d 164, 68 A.L.R.6th 709 (4th Cir. 2010).
- 6 Ward v. Dixie Nat. Life Ins. Co., 595 F.3d 164, 68 A.L.R.6th 709 (4th Cir. 2010).
- 7 Ward v. Dixie Nat. Life Ins. Co., 595 F.3d 164, 68 A.L.R.6th 709 (4th Cir. 2010).
- 8 Fernandez-Vargas v. Gonzales, 548 U.S. 30, 126 S. Ct. 2422, 165 L. Ed. 2d 323 (2006); Ward v. Dixie Nat. Life Ins. Co., 595 F.3d 164, 68 A.L.R.6th 709 (4th Cir. 2010).
- 9 Ward v. Dixie Nat. Life Ins. Co., 595 F.3d 164, 68 A.L.R.6th 709 (4th Cir. 2010).
- 10 Ward v. Dixie Nat. Life Ins. Co., 595 F.3d 164, 68 A.L.R.6th 709 (4th Cir. 2010).
- 11 Ward v. Dixie Nat. Life Ins. Co., 595 F.3d 164, 68 A.L.R.6th 709 (4th Cir. 2010).
- 12 Ward v. Dixie Nat. Life Ins. Co., 595 F.3d 164, 68 A.L.R.6th 709 (4th Cir. 2010).
- 13 Ward v. Dixie Nat. Life Ins. Co., 595 F.3d 164, 68 A.L.R.6th 709 (4th Cir. 2010).
- 14 Empresa Cubana Exportadora de Alimentos y Productos Varios v. U.S. Dept. of Treasury, 638 F.3d 794 (D.C. Cir. 2011), petition for cert. filed, 80 U.S.L.W. 3459 (U.S. Jan. 27, 2012).

End of Document

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73 Am. Jur. 2d Statutes § 238

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VI. Operation and Effect

B. Prospective or Retrospective Operation

§ 238. Clarifying and interpretative acts

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  278.16

A statute that merely clarifies, rather than changes, existing law is properly applied to transactions predating its enactment.¹ Such a legislative act has no retrospective effect because the true meaning of the statute remains the same.²

Also, interpretative laws apply both prospectively and retroactively unless there is legislative expression to the contrary.³ However, it has been stated that the usual purpose of a special interpretive statute is to correct a judicial interpretation of a prior law which the legislature determines to be inaccurate; where such statutes are given any effect, the effect is prospective only.⁴ The mere fact that a legislature enacts a new law in order to correct or clarify a recent judicial decision does not warrant an inference that the legislature intended the new law to apply to the case giving rise to the statute.⁵

CUMULATIVE SUPPLEMENT

Cases:

Courts ordinarily assume that Congress, when drafting a statute, gives each provision independent meaning. [Torres v. Lynch](#), 136 S. Ct. 1619 (2016).

Clarifying amendments to a statute, which apply to all claims pending or brought before state's courts after the amendment's passing, are distinct from altering amendments, which apply to claims arising on or after effective date of amendment, in that they do not change the substance of the original law. [Ray v. North Carolina Dept. of Transp.](#), 727 S.E.2d 675 (N.C. 2012).

A subsequent statute clarifying a prior statute can be used to determine the meaning of the prior statute even if the interpretation affects alleged vested rights. [Cloudi Mornings, LLC. v. City of Broken Arrow, 2019 OK 75, 454 P.3d 753 \(Okla. 2019\)](#).

There is no freestanding exception to the general rule against retroactivity for clarifying amendments. [State v. Steinly, 2015 UT 15, 345 P.3d 1182 \(Utah 2015\)](#).

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Footnotes

- 1 [Dobbs v. Anthem Blue Cross and Blue Shield, 600 F.3d 1275 \(10th Cir. 2010\); Carter v. California Dept. of Veterans Affairs, 38 Cal. 4th 914, 44 Cal. Rptr. 3d 223, 135 P.3d 637 \(2006\)](#).
- 2 [Carter v. California Dept. of Veterans Affairs, 38 Cal. 4th 914, 44 Cal. Rptr. 3d 223, 135 P.3d 637 \(2006\)](#).
- 3 [Holt v. State Farm Fire & Cas. Co., 627 F.3d 188 \(5th Cir. 2010\)](#).
- 4 [Ward v. Dixie Nat. Life Ins. Co., 595 F.3d 164, 68 A.L.R.6th 709 \(4th Cir. 2010\)](#).
- 5 [Ward v. Dixie Nat. Life Ins. Co., 595 F.3d 164, 68 A.L.R.6th 709 \(4th Cir. 2010\)](#).

End of Document

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73 Am. Jur. 2d Statutes § 239

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VI. Operation and Effect

B. Prospective or Retrospective Operation

§ 239. Ameliorative and curative statutes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  278.11

When the statute is ameliorative or curative, it may be applied retroactively.¹ "Curative acts" operate on conditions already existing² and, in a sense, can have no prospective operation.³ So long as such acts do not interfere with contract rights,⁴ and where they are otherwise valid, they must be given a retrospective operation.⁵

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Footnotes

- ¹ [Oberhand v. Director, Div. of Taxation](#), 193 N.J. 558, 940 A.2d 1202 (2008).
- ² [Wichelman v. Messner](#), 250 Minn. 88, 83 N.W.2d 800, 71 A.L.R.2d 816 (1957).
As to general principles relating to the validity of curative acts, see [Am. Jur. 2d, Constitutional Law § 752](#).
- ³ [Snidow v. Montana Home for the Aged](#), 88 Mont. 337, 292 P. 722 (1930).
- ⁴ [State ex rel. McElroy v. A. M. Kinney, Inc.](#), 171 Ohio St. 193, 12 Ohio Op. 2d 301, 168 N.E.2d 400 (1960).
- ⁵ [Yelton v. Plantz](#), 226 Ind. 155, 77 N.E.2d 895 (1948); [State ex rel. Strenge v. Westling](#), 81 S.D. 34, 130 N.W.2d 109 (1964).

End of Document

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73 Am. Jur. 2d Statutes § 240

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VI. Operation and Effect

B. Prospective or Retrospective Operation

§ 240. Statutes relating to remedies and procedures

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  278.11, 278.13, 278.14

Procedural laws apply both prospectively and retroactively unless there is legislative expression to the contrary.¹ Even if the law does not explicitly provide for retroactive application, it may be applied retroactively only if it is merely procedural rather than substantive.² Similarly, remedial legislation should be applied retroactively.³ Remedial statutes or statutes relating to remedies or modes of procedure, which do not create new or take away vested rights but only operate in furtherance of the remedy or confirmation of rights already existing, do not come within the legal conception of a retrospective law or the general rule against retrospective operation of statutes.⁴ As otherwise stated, remedial statutes constitute an exception to the general rule that statutes are not to be given a retroactive operation but only to the extent that they do not impair vested rights.⁵ However, the mere classification of a statute as "remedial" does not automatically overcome the strong presumption that statutes should be applied prospectively since the term may broadly encompass any attempt to supply some defect or abridge some superfluity in the former law.⁶

Caution:

Retroactive application of remedial statutes is the exception rather than the rule, and such application will be denied absent strong and compelling reasons.⁷

Observation:

For purposes of determining whether statutory changes apply retroactively, "rules of procedure" are concerned solely with accuracy and economy in litigation and govern the means by which disputes regarding the content or application of substantive rules should be resolved. On the other hand, "substantive rules" are concerned with directing behavior outside of the courtroom and tell individuals, organizations, and governments to do certain things or abstain from certain conduct on pain of some sanction.⁸

The presumption that a procedural change is to be applied retroactively falls away when the statute making the change specifies that the statute shall not apply to pending cases.⁹

The mere alteration of a statutory scheme, even if significant, does not by itself support the conclusion that a statute is remedial and thus retroactive.¹⁰

Jurisdiction does not relate to the rights of the parties but to the power of the court.¹¹ Therefore, jurisdictional statutes are generally not considered impermissibly retroactive.¹² The presumption against the application, in cases pending at time of its enactment, of a statutory provision that would operate retroactively does not apply to jurisdiction-conferring or jurisdiction-stripping statutes, which usually do not take away any substantive right but simply change the tribunal that is to hear the case.¹³

CUMULATIVE SUPPLEMENT

Cases:

Amended statute, which changed the legal standard for courts to apply in ruling on reunification motions involving a child placed with the non-offending parent, is a remedial statute and does not affect substantive rights, and, thus, there is no bar on its retrospective application. [West's F.S.A. § 39.522\(3\)](#). [T.N.L. v. Department of Children and Families](#), 132 So. 3d 319 (Fla. 4th DCA 2014).

For purposes of general rule that statute governing only procedure of the courts rather than substantive law is to be given retroactive effect, "substantive law" creates rights, duties, and obligations, while "procedural law" is that law which prescribes the methods of enforcement of rights, duties, and obligations. [McConville v. Cotton States Mut. Ins. Co.](#), 315 Ga. App. 11, 726 S.E.2d 481 (2012).

"Procedural laws," which generally apply both prospectively and retroactively, prescribe a method for enforcing a substantive right and relate to the form of the proceeding or the operation of the laws. [LSA–C.C. art. 6](#); [LSA–R.S. 1:2](#). [Church Mut. Ins. Co. v. Dardar](#), 145 So. 3d 271 (La. 2014).

Parties' substantive rights and liabilities are determined by the law in place at the time when a cause of action arises, while their procedural rights and responsibilities are governed by the law in effect at the time of the procedural act at issue. [Gressman v. State](#), 2013 UT 63, 323 P.3d 998 (Utah 2013).

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Footnotes

- 1 [Holt v. State Farm Fire & Cas. Co.](#), 627 F.3d 188 (5th Cir. 2010); [Edward T. Byrd & Co., Inc. v. WPSC Venture I](#), 66 So. 3d 979 (Fla. Dist. Ct. App. 5th Dist. 2011); [State v. Parent](#), 2006 WI 132, 298 Wis. 2d 63, 725 N.W.2d 915 (2006).
- 2 [Greene v. U.S.](#), 440 F.3d 1304 (Fed. Cir. 2006); [Moses v. Dodaro](#), 774 F. Supp. 2d 206 (D.D.C. 2011).
No one has a vested right in any given mode of procedure, and changes in procedural rules may often be applied in suits arising before their enactment without raising concerns about retroactivity. [Molina Jerez v. Holder](#), 625 F.3d 1058 (8th Cir. 2010).
- 3 [CFCU Community Credit Union v. Hayward](#), 552 F.3d 253 (2d Cir. 2009); [Edward T. Byrd & Co., Inc. v. WPSC Venture I](#), 66 So. 3d 979 (Fla. Dist. Ct. App. 5th Dist. 2011); [Nelson v. HSBC Bank USA](#), 87 A.D.3d 995, 929 N.Y.S.2d 259 (2d Dep't 2011) (remedial legislation should be given retroactive effect in order to effectuate its beneficial purpose); [State v. Ferguson](#), 120 Ohio St. 3d 7, 2008-Ohio-4824, 896 N.E.2d 110 (2008).
- 4 [Smiley v. State](#), 966 So. 2d 330 (Fla. 2007).
For purposes of determining whether a statutory amendment is procedural in nature, so as to apply retroactively to cases already pending, a substantive law relates to rights and duties giving rise to the cause of action while procedural statutes supply the machinery used to effect the suit; additionally, a substantive law takes away or impairs vested rights acquired under existing laws or creates a new obligation, imposes a new duty, or attaches a new disability in respect to transactions or considerations already passed. [State ex rel. Carter v. City of Independence](#), 272 S.W.3d 371 (Mo. Ct. App. W.D. 2008).
- 5 [CFCU Community Credit Union v. Hayward](#), 552 F.3d 253 (2d Cir. 2009).
- 6 [CFCU Community Credit Union v. Hayward](#), 552 F.3d 253 (2d Cir. 2009).
- 7 [Estate of Moreland v. Dieter](#), 576 F.3d 691 (7th Cir. 2009).
- 8 [Thomas v. Guardsmark, LLC](#), 487 F.3d 531 (7th Cir. 2007).
- 9 [In re McKinney](#), 457 F.3d 623 (7th Cir. 2006).
- 10 [Estate of Moreland v. Dieter](#), 576 F.3d 691 (7th Cir. 2009).
- 11 [Am. Jur. 2d, Courts](#) § 56.
- 12 [Scheerer v. U.S. Atty. Gen.](#), 513 F.3d 1244 (11th Cir. 2008).
- 13 [Hamdan v. Rumsfeld](#), 548 U.S. 557, 126 S. Ct. 2749, 165 L. Ed. 2d 723 (2006).
As to presumption against retroactivity, see § 237.

End of Document

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73 Am. Jur. 2d Statutes § 241

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VI. Operation and Effect

B. Prospective or Retrospective Operation

§ 241. Amendatory acts

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  278.17

Amendments are presumed to have prospective application unless the legislature's preference for retroactivity is explicitly stated or clearly indicated.¹ In determining whether a statutory amendment has an impermissible retroactive effect, the court asks whether application would impair rights a party possessed when the party acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed.² If the statute would have any of these effects, the traditional presumption of prospectivity applies.³ However, if a statutory amendment is deemed to be procedural in nature, it will be applied retroactively to cases already pending on the effective date of the amendment unless an express contrary intent appears from the terms of the amendment.⁴

Normally, when an amendment is deemed clarifying rather than substantive, it is applied retroactively.⁵ Concerns about retroactive application are not implicated when an amendment is deemed to clarify relevant law rather than effect a substantive change in the law.⁶ A number of factors may indicate whether an amendment is clarifying rather than substantive: (1) whether the enacting body declared that it was clarifying a prior enactment; (2) whether a conflict or ambiguity existed prior to the amendment; and (3) whether the amendment is consistent with a reasonable interpretation of the prior enactment and its legislative history.⁷

Procedural ramifications of a substantive amendment do not make the amendment procedural.⁸

CUMULATIVE SUPPLEMENT

Cases:

Congress may amend the law and make the change applicable to pending cases, even when the amendment is outcome determinative. [U.S.C.A. Const. Art. 3, § 1 et seq.](#) [Bank Markazi v. Peterson](#), 136 S. Ct. 1310 (2016).

A substantive amendment will not be given retroactive effect. [International Union of Operating Engineers Local 965 v. Illinois Labor Relations Bd., State Panel](#), 391 Ill. Dec. 553, 30 N.E.3d 1191 (App. Ct. 4th Dist. 2015).

A statutory amendment rejecting the Supreme Court's prior interpretation of a statute is not to be applied retroactively as a clarification of the law, overruling [State v. Kevin](#), 191 Vt. 30, 38 A.3d 26. [State v. Aubuchon](#), 2014 VT 12, 90 A.3d 914 (Vt. 2014).

Statutory amendment is "curative," such that it may apply retroactively, only if it clarifies or technically corrects ambiguous statute. [In re C.M.F.](#), 314 P.3d 1109 (Wash. 2013).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Amaker v. King County](#), 540 F.3d 1012 (9th Cir. 2008); [Izaak Walton League of America v. Lake County Property Tax Assessment Bd. of Appeals](#), 881 N.E.2d 737 (Ind. Tax Ct. 2008); [Nelson v. HSBC Bank USA](#), 87 A.D.3d 995, 929 N.Y.S.2d 259 (2d Dep't 2011).
- 2 [Killingsworth v. HSBC Bank Nevada, N.A.](#), 507 F.3d 614 (7th Cir. 2007).
- 3 [Killingsworth v. HSBC Bank Nevada, N.A.](#), 507 F.3d 614 (7th Cir. 2007).
As to presumption of prospective application, see § 237.
- 4 [State ex rel. Carter v. City of Independence](#), 272 S.W.3d 371 (Mo. Ct. App. W.D. 2008).
- 5 [Middleton v. City of Chicago](#), 578 F.3d 655 (7th Cir. 2009).
- 6 [Middleton v. City of Chicago](#), 578 F.3d 655 (7th Cir. 2009).
- 7 [Middleton v. City of Chicago](#), 578 F.3d 655 (7th Cir. 2009).
- 8 [Thomas v. Guardsmark, LLC](#), 487 F.3d 531 (7th Cir. 2007).

End of Document

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73 Am. Jur. 2d Statutes VI C Refs.

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.


VI. Operation and Effect

C. Place of Operation

[Topic Summary](#) | [Correlation Table](#)

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West's Key Number Digest, [Statutes](#)  174, 241(1)

A.L.R. Library

A.L.R. Index, Statutes

West's A.L.R. Digest, [Statutes](#)  174, 241(1)

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73 Am. Jur. 2d Statutes § 242

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VI. Operation and Effect

C. Place of Operation

§ 242. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  174

Statutes enacted by a state legislature apply to all rights which arise¹ and all persons who come within the limits of the state.² No extraterritorial effect is given to a statute creating a rule of evidence by the fact that the rule is applied to the trial of an action involving parties who are nonresidents.³

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Footnotes

- ¹ [Atchison, T. & S. F. Ry. Co. v. Fajardo, 74 Kan. 314, 86 P. 301 \(1906\).](#)
- ² [Atchison, T. & S. F. Ry. Co. v. Fajardo, 74 Kan. 314, 86 P. 301 \(1906\).](#)
- ³ [As to statutes which operate only within particular localities within the state, see § 5. Pennsylvania Co. v. McCann, 54 Ohio St. 10, 42 N.E. 768 \(1896\).](#)

End of Document

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73 Am. Jur. 2d Statutes § 243

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VI. Operation and Effect

C. Place of Operation

§ 243. Territorial limitations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  174

It is frequently declared that statutes can have no extraterritorial effect.¹ In this regard, it has been said that acts of Congress normally do not have extraterritorial application unless such an intent is clearly manifested.²

As sometimes stated, unless the intention to have a statute operate beyond the limits of the state or country is clearly expressed or indicated by its language, purpose, subject matter, or history, no legislation is presumed to be intended to operate outside the territorial jurisdiction of the state or country enacting it. To the contrary, the presumption is that the statute is intended to have no extraterritorial effect but to apply only within the territorial jurisdiction of the state or country enacting it. Thus, an extraterritorial effect is not to be given statutes by implication.³

Thus, the general rule is that no state or nation can by its laws directly affect, bind, or operate upon property or persons beyond its territorial jurisdiction.⁴ A statute may thus be valid insofar as it relates to persons or things within the jurisdiction although it is invalid insofar as it relates to persons and things outside the jurisdiction.⁵ However, a State may have the power to legislate concerning the rights and obligations of its citizens with regard to transactions occurring beyond its boundaries.⁶

CUMULATIVE SUPPLEMENT

Cases:

Courts presume that statutes do not apply extraterritorially to ensure that the Judiciary does not erroneously adopt an interpretation of United States law that carries foreign policy consequences not clearly intended by the political branches. [Hernandez v. Mesa, 140 S. Ct. 735 \(2020\)](#).

Courts presume that federal statutes apply only within the territorial jurisdiction of the United States. [WesternGeco LLC v. ION Geophysical Corp.](#), 138 S. Ct. 2129 (2018).

If no clear, affirmative indication exists that a federal statute applies extraterritorially, the statute is not extraterritorial and the court proceeds to the second step of the two-step framework for analyzing extraterritoriality issues, in which it determines whether the case involves a domestic application of the statute; this determination is made by determining the statute's focus. [Motorola Solutions, Inc. v. Hytera Communications Corp. Ltd.](#), 436 F. Supp. 3d 1150 (N.D. Ill. 2020).

[END OF SUPPLEMENT]

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Footnotes

- 1 [U.S. v. Belmont](#), 301 U.S. 324, 57 S. Ct. 758, 81 L. Ed. 1134 (1937).
Acts of Congress normally do not have extraterritorial application unless such an intent is clearly manifested; that presumption has special force when a court is construing treaty and statutory provisions that may involve foreign and military affairs for which the President has unique responsibility. [Sale v. Haitian Centers Council, Inc.](#), 509 U.S. 155, 113 S. Ct. 2549, 125 L. Ed. 2d 128 (1993).
As to recognition and enforcement of foreign rights, see [Am. Jur. 2d, Conflict of Laws §§ 7 to 19](#).
- 2 [Sale v. Haitian Centers Council, Inc.](#), 509 U.S. 155, 113 S. Ct. 2549, 125 L. Ed. 2d 128 (1993).
- 3 [E.E.O.C. v. Arabian American Oil Co.](#), 499 U.S. 244, 111 S. Ct. 1227, 113 L. Ed. 2d 274 (1991); [Coca-Cola Co. v. Harmar Bottling Co.](#), 218 S.W.3d 671 (Tex. 2006).
In considering whether the "convicted in any court" element of a federal felon-in-possession-of-firearm statute included convictions entered in foreign courts, the ordinary assumption that the reach of domestically oriented statutes is domestic, not extraterritorial, applied, given that Congress likely did not consider the issue and that other indicia of intent were in approximate balance. [Small v. U.S.](#), 544 U.S. 385, 125 S. Ct. 1752, 161 L. Ed. 2d 651 (2005).
- 4 [Tattis v. Karthans](#), 215 So. 2d 685 (Miss. 1968); [Ex parte First Pennsylvania Banking & Trust Co.](#), 247 S.C. 506, 148 S.E.2d 373 (1966).
- 5 [Tattis v. Karthans](#), 215 So. 2d 685 (Miss. 1968).
- 6 [U.S. v. Curtiss-Wright Export Corporation](#), 299 U.S. 304, 57 S. Ct. 216, 81 L. Ed. 255 (1936); [Tattis v. Karthans](#), 215 So. 2d 685 (Miss. 1968).

End of Document

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73 Am. Jur. 2d Statutes § 244

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.


VI. Operation and Effect

C. Place of Operation

§ 244. Penal statutes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  174, 241(1)

The general rule that statutes can have no extraterritorial effect is particularly applicable to laws of the state relating to crimes and penalties.¹ Such a statute may therefore be valid insofar as it relates to persons and things within the jurisdiction and invalid insofar as it relates to persons and things outside the jurisdiction.² However, a penal statute may be enacted in regard to an act done within the state even though it is closely associated or done in connection with, or in preparation for, an act done outside the state.³

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Footnotes

- ¹ [People v. Devine](#), 185 Mich. 50, 151 N.W. 646 (1915).
- ² [State v. Ray](#), 151 N.C. 710, 66 S.E. 204 (1909).
- ³ [State v. Stuart](#), 194 Mo. 345, 92 S.W. 878 (1906).

End of Document

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73 Am. Jur. 2d Statutes VI D Refs.

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VI. Operation and Effect

D. Time of Operation

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  248, 250, 251, 255, 257

A.L.R. Library

A.L.R. Index, Statutes

West's A.L.R. Digest, [Statutes](#)  248, 250, 251, 255, 257

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73 Am. Jur. 2d Statutes § 245

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VI. Operation and Effect


D. Time of Operation

1. In General

§ 245. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  248, 250

Although there are instances of laws which take effect immediately or when passed,¹ a distinction is generally observed between the time when a bill becomes a law and the time when it goes into effect and begins to operate.² Once a bill becomes law by being passed by the legislature, it generally does not take effect until a prescribed period of time after the adjournment of the session in which it was enacted.³ Under constitutions which, by providing in effect that no bill will become a law until it has received the approval of the chief executive or has been passed over his or her refusal to approve, make the executive a necessary constituent of the lawmaking power, an act becomes a law not when it is passed by the two houses of the legislature but when it is approved by the executive⁴ unless it becomes a law by the lapse of time specified for the return of a bill to the legislature or by being passed by the legislature notwithstanding the disapproval of the executive.⁵

As a rule, where the statute fixes no time for going into effect, and there is no constitutional or general statutory provision governing the matter, it becomes effective on the day of its passage or enactment into law.⁶

Definitions:

The "effective date" of a statute is the date upon which the statute came into being as existing law. The "operative date" is defined as the date upon which directives of the statute may be actually implemented.⁷ The effective and operative dates of a statute are often the same⁸ although the legislature may postpone the operation of certain statutes until a later time.⁹

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Footnotes

- 1 §§ 247, 248.
- 2 *Preston v. State Bd. of Equalization*, 25 Cal. 4th 197, 105 Cal. Rptr. 2d 407, 19 P.3d 1148 (2001) (disapproved of on other grounds by, *City of Boulder v. Leanin' Tree, Inc.*, 72 P.3d 361 (Colo. 2003)).
- 3 *BIC Pen Corp. v. Carter*, 251 S.W.3d 500 (Tex. 2008).
- 4 *Town of Louisville v. Portsmouth Sav. Bank*, 104 U.S. 469, 26 L. Ed. 775, 1881 WL 19877 (1881); *Butts County v. Strahan*, 151 Ga. 417, 107 S.E. 163 (1921).
As to approval and veto power by the executive, generally, see §§ 30 to 37.
- 5 *Butts County v. Strahan*, 151 Ga. 417, 107 S.E. 163 (1921).
As to limitations of time as to executive action, see §§ 33, 34.
- 6 *Johnson v. U.S.*, 529 U.S. 694, 120 S. Ct. 1795, 146 L. Ed. 2d 727 (2000).
- 7 *Preston v. State Bd. of Equalization*, 25 Cal. 4th 197, 105 Cal. Rptr. 2d 407, 19 P.3d 1148 (2001) (disapproved of on other grounds by, *City of Boulder v. Leanin' Tree, Inc.*, 72 P.3d 361 (Colo. 2003)).
- 8 *Preston v. State Bd. of Equalization*, 25 Cal. 4th 197, 105 Cal. Rptr. 2d 407, 19 P.3d 1148 (2001) (disapproved of on other grounds by, *City of Boulder v. Leanin' Tree, Inc.*, 72 P.3d 361 (Colo. 2003)).
- 9 § 249.

End of Document

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73 Am. Jur. 2d Statutes § 246

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VI. Operation and Effect


D. Time of Operation

1. In General

§ 246. Time of passage

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  248, 250

The interpretation of such expressions as "prior to," or "after," or "at the time of" the "passage" or "passing" of the act in which the expression appears is dependent upon the intent of the legislative body in using such language in the act.¹ In some cases, the term "passage" has been interpreted to mean the date when the act secures the approval of the two houses of the legislature.² Where the term "passage of this act" appears in the body of a legislative enactment as describing the time element which brings facts or conditions within or without its operation, it is generally construed as designating or referring to the time when the act goes into effect rather than to the time of its enactment or approval.³

Where constitutional provisions require the chief executive's approval of an act before it becomes a law, or in the absence of his or her approval, passage over his or her veto, "passage" means the date of the chief executive's approval,⁴ or of his or her failure to return it to the legislature within the proper time,⁵ or in the event of a veto, the date of the act's final passage over the veto.⁶ However, under a constitution providing that no act will take effect until the expiration of a prescribed period of time after its passage, it has been found that the word "passage" means not the final act of approval by the governor but the affirmative vote of the two houses of the legislature.⁷

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Footnotes

- ¹ [State v. Williams](#), 173 Ind. 414, 90 N.E. 754 (1910).
² [State v. Mounts](#), 36 W. Va. 179, 14 S.E. 407 (1891).

- 3 Consolidated Motors v. Skousen, 56 Ariz. 481, 109 P.2d 41, 132 A.L.R. 1040 (1941).
4 Arnold v. U.S., 13 U.S. 104, 3 L. Ed. 671, 1815 WL 1497 (1815).
As to the approval and veto power of the executive, generally, see §§ 30 to 37.
5 State v. Grant Superior Court, 202 Ind. 197, 172 N.E. 897, 71 A.L.R. 1354 (1930).
6 Jemison v. Town of Ft. Deposit, 21 Ala. App. 331, 108 So. 396 (1926).
7 State v. Mounts, 36 W. Va. 179, 14 S.E. 407 (1891).

End of Document

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73 Am. Jur. 2d Statutes § 247

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VI. Operation and Effect

D. Time of Operation

2. Provisions for Immediate Operation

§ 247. Generally; constitutionality of provisions for immediate operation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  250

Provisions are sometimes incorporated into statutes declaring them to take effect immediately or from and after their passage.¹ The fact that hardship may result from making an act effective immediately upon its passage does not render the act invalid as an arbitrary or unreasonable exercise of power by the legislative body.² Indeed, under the provisions of some constitutions, certain specified acts are expressly permitted to go into effect immediately.³ An invalid provision that an act will take effect immediately does not impair the validity of the remainder of the statute as it may take effect at the regular time appointed by law.⁴

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Footnotes

- ¹ [State v. Grant Superior Court](#), 202 Ind. 197, 172 N.E. 897, 71 A.L.R. 1354 (1930).
- ² [Jacob Ruppert, Inc. v. Caffey](#), 251 U.S. 264, 40 S. Ct. 141, 64 L. Ed. 260 (1920).
- ³ [Chadwick v. City of Crawfordsville](#), 216 Ind. 399, 24 N.E.2d 937, 129 A.L.R. 469 (1940).
- ⁴ [People v. Phillips](#), 76 Cal. App. 2d 515, 173 P.2d 392 (1st Dist. 1946); [Attorney General v. Lindsay](#), 178 Mich. 524, 145 N.W. 98 (1914).

End of Document

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73 Am. Jur. 2d Statutes § 248

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VI. Operation and Effect

D. Time of Operation

2. Provisions for Immediate Operation

§ 248. Declaration of emergency; conclusiveness of legislative determination

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  251

Constitutional provisions exempting emergency legislation from the requirement that statutes should not take effect until a specified time after their enactment, or publication, or end of the session generally require that the existence of the emergency be evidenced by a declaration in the statute itself that the emergency exists.¹ Where the existence of an emergency is required to be declared in the statute, an act without an emergency clause cannot go into effect in advance of the prescribed time even though it fixes an earlier time for its going into effect.² A bill which does not, when approved, contain an emergency clause may not be shown by the journals to have been enacted with such clause by a constitutional majority so as to permit the bill to take immediate effect.³

Under a constitutional provision that the facts upon which an emergency bill can be made to take effect immediately must be set forth in the preamble, the court may prevent the immediate operation of the statute in which the emergency is declared where the facts are not so set forth.⁴ In this respect, the emergency must be expressed in the act, and the mere declaration that an emergency exists is not a compliance with the constitution.⁵ An emergency clause is insufficient where there is no fact, event, or state or condition of affairs mentioned as creating an emergency.⁶

According to one line of decisions, the legislative determination that an emergency exists is neither final nor conclusive,⁷ the matter being held to present a judicial question which gives the courts the final determination.⁸ However, another line of authorities holds the question to be one strictly and solely for legislative determination.⁹ In any event, all doubts will be resolved in favor of the legislative determination.¹⁰

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Footnotes

- 1 Biggs v. McBride, 17 Or. 640, 21 P. 878 (1889).
- 2 Graham v. Dye, 308 Ill. 283, 139 N.E. 390 (1923).
- 3 In re General Appropriation Bill, 16 Colo. 539, 29 P. 379 (1891).
- 4 Payne v. Graham, 118 Me. 251, 107 A. 709, 7 A.L.R. 516 (1919).
- 5 Graham v. Dye, 308 Ill. 283, 139 N.E. 390 (1923).
- 6 ACW, Inc. v. Weiss, 329 Ark. 302, 947 S.W.2d 770 (1997).
- 7 People ex rel. Murray v. Holmes, 341 Ill. 23, 173 N.E. 145, 71 A.L.R. 1327 (1930).
- 8 Priest v. Polk, 322 Ark. 673, 912 S.W.2d 902 (1995).
- 9 State ex rel. Schorr v. Kennedy, 132 Ohio St. 510, 8 Ohio Op. 494, 9 N.E.2d 278, 110 A.L.R. 1428 (1937);
Breck v. Janklow, 2001 SD 28, 623 N.W.2d 449 (S.D. 2001).
- 10 State v. Howell, 85 Wash. 294, 147 P. 1159 (1915).

End of Document

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73 Am. Jur. 2d Statutes § 249

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VI. Operation and Effect


D. Time of Operation

3. Provisions Postponing Time of Operation

§ 249. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  248, 250

Although the effective and operative dates of a statute are often the same,¹ the legislature may postpone the operation of certain statutes until a later time.² The postponement of the effective date of a statute may relate to only a portion of the enactment.³ Also, a postponement does not necessarily mean that the legislature intended to limit the statute's application to transactions occurring after the effective date.⁴

Observation:

Where compelling indicators of legislature's intent to give statute retrospective effect exist, the mere postponement of statute's operative date is not enough to negate these indicators.⁵

- 1 § 245.
2 *People v. Alford*, 42 Cal. 4th 749, 68 Cal. Rptr. 3d 310, 171 P.3d 32 (2007).
 As to the definitions of "effective date" and "operative date," generally, see § 245.
3 *Taylor v. Com. ex rel. Dummit*, 305 Ky. 75, 202 S.W.2d 992 (1947).
4 *People v. Alford*, 42 Cal. 4th 749, 68 Cal. Rptr. 3d 310, 171 P.3d 32 (2007).
5 *Preston v. State Bd. of Equalization*, 25 Cal. 4th 197, 105 Cal. Rptr. 2d 407, 19 P.3d 1148 (2001) (disapproved
 of on other grounds by, *City of Boulder v. Leanin' Tree, Inc.*, 72 P.3d 361 (Colo. 2003)).
 As to prospective or retrospective operation of statutes, generally, see §§ 235 to 241.

End of Document

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73 Am. Jur. 2d Statutes § 250

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VI. Operation and Effect

D. Time of Operation

3. Provisions Postponing Time of Operation

§ 250. Provisions for taking effect upon or after publication

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  257

The operation of a law from the time of its passage may be prevented by provisions sometimes included in state constitutions to the effect that no general law, or law of a public nature, will be in force until published.¹ The requirement of the publication of a statute prior to its taking effect has been said to be for the purpose of enabling persons affected to shape their courses accordingly.² However, under some constitutional provisions, the necessity for publication of the law by authority in order to render it operative could be obviated by the declaration of an emergency in the preamble or in the body of the law.³

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Footnotes

- 1 [State v. Frear](#), 142 Wis. 320, 125 N.W. 961 (1910).
As to the publication of statutes, generally, see § 36.
- 2 [O'Connor v. City of Fond du Lac](#), 109 Wis. 253, 85 N.W. 327 (1901).
- 3 [State v. Grant Superior Court](#), 202 Ind. 197, 172 N.E. 897, 71 A.L.R. 1354 (1930).

End of Document

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73 Am. Jur. 2d Statutes § 251

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VI. Operation and Effect


D. Time of Operation

3. Provisions Postponing Time of Operation

§ 251. Executive and administrative power

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  248, 250

The general rule that the chief executive, in the absence of express authorization, may not modify or change the effect of a proposed law, or do anything concerning it except approve or disapprove of it as a whole,¹ has been applied to a provision of an act prescribing the date when it is to go into effect so that the chief executive has no power to substitute a different date from that specified. However, where a bill specifies the date when it is to become effective and the chief executive does not sign the bill until after the specified date, it becomes effective from the date of the chief executive's signature.² Moreover, a statute is not necessarily rendered invalid by the fact that, under it, the governor has discretion to determine when it shall become operative by a power of appointment essential to the operation of the act.³ In addition, a statutory provision that within a specified number of days after its passage an administrative board will adopt measures to facilitate its enforcement does not postpone the effective date of the law until this duty is performed.⁴

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Footnotes

- ¹ § 30.
- ² *Robey v. Broersma*, 181 Md. 325, 29 A.2d 827, 146 A.L.R. 687 (1943).
- ³ *Commonwealth ex rel. Elkin v. Moir*, 199 Pa. 534, 49 A. 351 (1901).
- ⁴ *Isenhour v. State*, 157 Ind. 517, 62 N.E. 40 (1901).

End of Document

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73 Am. Jur. 2d Statutes § 252

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VI. Operation and Effect

D. Time of Operation

3. Provisions Postponing Time of Operation

§ 252. Effect of postponement

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  248, 250

As a general rule a statute speaks as of the time when it takes effect.¹ When the time for taking effect is postponed, saving or repealing clauses in an act do not take effect at a different time from the act as a whole though expressed in the present tense.²

Some courts have followed a view contrary to the proposition that a statute duly enacted is devoid of any effect until the time when its provisions become operative.³ Thus, the parties to a contract which is entered into after a statute has been enacted but before it has gone into effect have been held to have notice of the effect that the statute will have upon the contract when it becomes operative.⁴

By reason of the provision of the United States Constitution that the Constitution and laws passed in pursuance thereto shall be the supreme law of the land, if a law passed by a state in the exercise of its acknowledged powers comes in conflict with a valid act of Congress, the state law generally must yield.⁵ In this regard, the legislative authority of the states as to a subject over which the several states may exercise control only in the absence of congressional regulation ceases immediately upon the enactment of a statute on the subject by Congress although the going into effect of the statute is postponed to a future date.⁶

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Footnotes

- ¹ [Young v. State ex rel. School City of Gary, Lake County, 230 Ind. 315, 103 N.E.2d 431 \(1952\).](#)
- ² [County School Bd. of Fairfax County v. Town of Herndon, 194 Va. 810, 75 S.E.2d 474 \(1953\).](#)
- ³ [Erie R. Co. v. People of State of New York, 233 U.S. 671, 34 S. Ct. 756, 58 L. Ed. 1149 \(1914\).](#)

- 4 [Diamond Glue Co. v. U.S. Glue Co.](#), 187 U.S. 611, 23 S. Ct. 206, 47 L. Ed. 328 (1903).
- 5 [Am. Jur. 2d, Constitutional Law § 230.](#)
- 6 [Erie R. Co. v. People of State of New York](#), 233 U.S. 671, 34 S. Ct. 756, 58 L. Ed. 1149 (1914).

End of Document

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73 Am. Jur. 2d Statutes § 253

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VI. Operation and Effect


D. Time of Operation

4. Computation of Time

§ 253. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  248, 250

The general rules for the interpretation of statutes are applicable to statutory provisions designating the time when a statute is to go into effect.¹ Thus, as in any case of statutory interpretation, the primary rule is to ascertain the intention of the legislature.² A court may not by construction, for the purpose of correcting defective legislation, substitute a time at which a statute is to take effect other than that declared by the legislature.³ In determining the legislative intent, the general rule is applied that statutes and sections of statutes in pari materia, including sections of the same statute, should be construed together and, if possible, harmonized.⁴

The courts of a state may take judicial notice of the time when a public statute takes effect.⁵

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Footnotes

- ¹ [Ross v. Jones](#), 151 Ga. 425, 107 S.E. 160 (1921).
- ² [Ross v. Jones](#), 151 Ga. 425, 107 S.E. 160 (1921).
As to the effect of the legislature's intention on the interpretation of statutes, generally, see [§ 59](#).
- ³ [State ex rel. Harness v. Roney](#), 82 Ohio St. 376, 92 N.E. 486 (1910).
- ⁴ [Ross v. Jones](#), 151 Ga. 425, 107 S.E. 160 (1921).
- ⁵ [The Delaware](#), 161 U.S. 459, 16 S. Ct. 516, 40 L. Ed. 771 (1896); [State v. Joseph](#), 175 Ala. 579, 57 So. 942 (1911).

End of Document

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73 Am. Jur. 2d Statutes § 254

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VI. Operation and Effect

D. Time of Operation

4. Computation of Time

§ 254. Fractions of day

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  248, 255

Generally, whenever it is necessary to prevent a wrong or to assert a meritorious right, or to determine conflicting rights, courts of justice will inquire as to the exact time of the day of the passage of a statute and effect will be given to it only from that time.¹ However, there is authority for the proposition that in the absence of evidence showing at what time of the day an act was passed or approved by the chief executive, it is presumed to have been passed or approved at the commencement of the day.² Furthermore, there is also authority for the rule that a statute providing that it will take effect "from and after" a day named takes effect on the day following the one mentioned.³ This rule is based upon the doctrine that in law a day is deemed to be an indivisible period of time and that therefore the fraction of a day must be excluded.⁴

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Footnotes

- ¹ [Fee v. Bornhorn](#), 251 S.W.2d 230 (Ky. 1952); [In re Grant's Estate](#), 377 Pa. 264, 105 A.2d 80 (1954).
- ² [U.S. v. Norton](#), 97 U.S. 164, 24 L. Ed. 907, 1877 WL 18646 (1877).
- ³ [State ex rel. Harness v. Roney](#), 82 Ohio St. 376, 92 N.E. 486 (1910).
- ⁴ [O'Connor v. City of Fond du Lac](#), 109 Wis. 253, 85 N.W. 327 (1901).

End of Document

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73 Am. Jur. 2d Statutes VII A Refs.

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

A. Suspension

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Statutes](#) 🔑 171

A.L.R. Library

A.L.R. Index, Statutes

West's A.L.R. Digest, Statutes 🔑 171

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End of Document

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73 Am. Jur. 2d Statutes § 255

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

A. Suspension

§ 255. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  171

The operation of a statute may be duly suspended by the legislature.¹ Indeed, a valid suspension of a statute must rest upon legislative action;² it may not be effected by judicial act³ or in any other way.⁴ However, the suspension of a statute may be based upon some condition, contingency, exigency, or state of facts declared by the legislative enactment to be sufficient to warrant the suspension by an executive or administrative body whose duty it is to execute or administer the law suspended.⁵

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- ¹ U.S. v. Stockslager, 129 U.S. 470, 9 S. Ct. 382, 32 L. Ed. 785 (1889); *McHugh v. Rubin*, 220 F.3d 53 (2d Cir. 2000).
- ² *Winslow v. Fleischer*, 112 Or. 23, 228 P. 101, 34 A.L.R. 826 (1924).
- ³ *King v. State*, 87 Tenn. 304, 10 S.W. 509 (1889).
- ⁴ *Arlington Hotel Co. v. Ewing*, 124 Tenn. 536, 138 S.W. 954 (1911) (declaring that there are no means known to the law whereby parties affected by a valid criminal statute may secure the legal suspension thereof).
- ⁵ *Winslow v. Fleischer*, 112 Or. 23, 228 P. 101, 34 A.L.R. 826 (1924).

End of Document

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73 Am. Jur. 2d Statutes VII B Refs.

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  149, 150, 152 to 164, 166 to 168, 172, 232

A.L.R. Library

A.L.R. Index, Statutes

West's A.L.R. Digest, [Statutes](#)  149, 150, 152 to 164, 166 to 168, 172, 232

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73 Am. Jur. 2d Statutes § 256

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

1. In General

§ 256. Continued force of statute

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  149

All acts not in terms limited in their operation to a particular term of time are in legal contemplation perpetual; that is, they continue in force until duly altered or repealed by competent authority.¹ Furthermore, the fact that a statute has remained unenforced for a long period of time does not render it inoperative.² In this respect, a statute cannot be terminated by means other than an express provision of subsequent law or necessary implication³ or an express provision in the repealing act itself for its termination by some act other than a repealing statute.⁴

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- ¹ [Plaquemines Parish Democratic Executive Committee v. Board of Sup'rs of Election For Parish of Plaquemines](#), 231 La. 146, 90 So. 2d 868 (1956); [National Ass'n for Advancement of Colored People v. Committee on Offenses Against Administration of Justice](#), 201 Va. 890, 114 S.E.2d 721 (1960).
- ² [District of Columbia v. John R. Thompson Co.](#), 346 U.S. 100, 73 S. Ct. 1007, 97 L. Ed. 1480 (1953); [U.S. v. Paisley](#), 957 F.2d 1161, 121 A.L.R. Fed. 717 (4th Cir. 1992); [International Tel. & Tel. Corp. v. U. S.](#), 210 Ct. Cl. 410, 536 F.2d 1361 (1976).
- ³ [National Ass'n for Advancement of Colored People v. Committee on Offenses Against Administration of Justice](#), 201 Va. 890, 114 S.E.2d 721 (1960).
- ⁴ [Moran v. La Guardia](#), 270 N.Y. 450, 1 N.E.2d 961, 104 A.L.R. 1160 (1936).

End of Document

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73 Am. Jur. 2d Statutes § 257

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

1. In General

§ 257. Temporary statutes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  172

A statute may be intended as merely temporary¹ as where the period during which a statute is to remain in force is limited at the time it is enacted by fixing a date,² event, or circumstance for its termination.³ An intention to have a statute operate temporarily must be found in the act itself, or in a statute relating thereto, and a court may not, even for the purpose of sustaining the validity of a statute, read into it a limitation in duration to the period of an existing financial emergency.⁴

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- ¹ [Bishop v. Bacon](#), 130 Pa. Super. 240, 196 A. 918 (1938).
- ² [Cunningham v. Smith](#), 143 Kan. 267, 53 P.2d 870 (1936).
- ³ [Public Hosp. Dist. No. 2 of Okanogan County v. Taxpayers of Public Hosp. Dist. No. 2 of Okanogan County](#), 44 Wash. 2d 623, 269 P.2d 594 (1954).
- ⁴ [Vanderbilt v. Brunton Piano Co.](#), 111 N.J.L. 596, 169 A. 177, 89 A.L.R. 1080 (N.J. Ct. Err. & App. 1933).

End of Document

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73 Am. Jur. 2d Statutes § 258

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

1. In General

§ 258. Temporary statutes—Effect

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  172

The fact that a statute is limited as to the time of its duration does not of itself make it a local or special act.¹ Where an act expires by its own limitations, the effect is the same as though it had been repealed at that time.² This rule has been applied to the effect of the expiration of the statute upon past transactions.³ The statute does not, however, cease to operate prior to the expiration of the stipulated time.⁴ Moreover, if a statute is in existence at the time of the enactment of an amendatory statute, the fact that it expires before the date when the amendatory statute becomes effective does not invalidate the amendatory statute.⁵

A federal statute provides that the expiration of a temporary statute will not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the temporary statute expressly so provides, and such statute must be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.⁶

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- 1 [Walters v. City of St. Louis](#), 364 Mo. 56, 259 S.W.2d 377 (1953), judgment aff'd, 347 U.S. 231, 74 S. Ct. 505, 98 L. Ed. 660 (1954).
- 2 [State v. McMillin](#), 150 Colo. 23, 370 P.2d 435 (1962); [Public Hosp. Dist. No. 2 of Okanogan County v. Taxpayers of Public Hosp. Dist. No. 2 of Okanogan County](#), 44 Wash. 2d 623, 269 P.2d 594 (1954).
- 3 [U.S. v. Boisdore's Heirs](#), 49 U.S. 113, 8 How. 113, 12 L. Ed. 1009, 1850 WL 6824 (1850).
- 4 [Hamilton v. Kentucky Distilleries & Warehouse Co.](#), 251 U.S. 146, 40 S. Ct. 106, 64 L. Ed. 194 (1919).

5 [Milk Control Bd. v. Pursifull](#), 219 Ind. 49, 36 N.E.2d 850 (1941).

6 [1 U.S.C.A. § 109](#).

The purpose of the general saving clause in the statute is to avoid the common-law presumption under which the repeal of a criminal statute results in the abatement of all prosecutions which have not yet reached final disposition in the highest court authorized to review them. [Warden, Lewisburg Penitentiary v. Marrero](#), 417 U.S. 653, 94 S. Ct. 2532, 41 L. Ed. 2d 383 (1974).

End of Document

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73 Am. Jur. 2d Statutes § 259

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

2. Repeal

a. In General

§ 259. Principles of legislative power

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  149, 150, 152 to 156, 232

There can be no vested right in an existing law which precludes its repeal.¹ The acts of past legislatures do not bind the power of successive legislatures to repeal legislation.² It is therefore a well-established principle that legislative power includes the power to repeal existing laws as well as the power to enact laws,³ subject to constitutional restrictions and inhibitions, such as the prohibition against the extinguishment of vested rights which have been acquired under the former law,⁴ or the impairment of the obligations of a contract,⁵ or the denial of due process of law.⁶ Moreover, the courts recognize the power of the legislature to repeal a statute enacted in compliance with a revenue-raising provision of the constitution, even though the constitution makes it the duty of the legislature to enact such a law to effectuate the constitutional provision, and the repeal of the statute will result in frustrating the purpose evidenced by the constitution.⁷ However, there is contrary authority with respect to constitutional mandates dealing with matters other than the raising of revenue.⁸

An "explicit repeal" occurs when a later statute explicitly identifies the earlier statute it is repealing.⁹ To effect an explicit repeal, a statute must identify the repealed statute.¹⁰ Congress can accomplish this identification by citing the earlier statute or referring to its subject matter or even by giving the style and case number of a lawsuit that is filed under the earlier statute.¹¹

A concurrent resolution of the two houses of the legislature is not effective to repeal a statutory enactment. This rule has been applied to a statute, the provisions of which are by its terms to continue in force until the legislature finds their further operation unnecessary.¹²

CUMULATIVE SUPPLEMENT

Cases:

Statutes enacted by one Congress cannot bind a later Congress, which remains free to repeal the earlier statute, to exempt the current statute from the earlier statute, to modify the earlier statute, or to apply the earlier statute but as modified; Congress remains free to express any such intention either expressly or by implication as it chooses. [Dorsey v. U.S., 132 S. Ct. 2321 \(2012\)](#).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Am. Jur. 2d, Constitutional Law § 748.](#)
- 2 [Village of Rosemont v. Jaffe, 482 F.3d 926 \(7th Cir. 2007\); People v. Gardner, 482 Mich. 41, 753 N.W.2d 78 \(2008\).](#)
- 3 [District of Columbia v. John R. Thompson Co., 346 U.S. 100, 73 S. Ct. 1007, 97 L. Ed. 1480 \(1953\).](#)
As to the authority of the legislature to repeal a statute enacted by initiative or referendum, see [Am. Jur. 2d, Initiative and Referendum § 52.](#)
- 4 [Am. Jur. 2d, Constitutional Law §§ 744 to 752.](#)
- 5 [Am. Jur. 2d, Constitutional Law § 753.](#)
- 6 [Am. Jur. 2d, Constitutional Law § 649.](#)
- 7 [Sawyer v. Gilmore, 109 Me. 169, 83 A. 673 \(1912\).](#)
- 8 [Biggs v. Beeler, 180 Tenn. 198, 173 S.W.2d 946, 153 A.L.R. 510 \(1943\).](#)
- 9 [Miccosukee Tribe of Indians of Florida v. U.S. Army Corps of Engineers, 619 F.3d 1289 \(11th Cir. 2010\).](#)
- 10 [Miccosukee Tribe of Indians of Florida v. U.S. Army Corps of Engineers, 619 F.3d 1289 \(11th Cir. 2010\).](#)
- 11 [Miccosukee Tribe of Indians of Florida v. U.S. Army Corps of Engineers, 619 F.3d 1289 \(11th Cir. 2010\).](#)
- 12 [Moran v. La Guardia, 270 N.Y. 450, 1 N.E.2d 961, 104 A.L.R. 1160 \(1936\).](#)
The principle that the repeal or modification of a statute requires a legislative act of equal dignity and import applies to the abolition of public offices. [Gallagher v. Regan, 42 N.Y.2d 230, 397 N.Y.S.2d 714, 366 N.E.2d 804 \(1977\).](#)

End of Document

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73 Am. Jur. 2d Statutes § 260

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

2. Repeal

a. In General

§ 260. Determination of intention to repeal

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  149, 150, 152

It is a matter for the courts, and not for the legislature, to determine whether a statute has or has not previously been repealed.¹ However, the legislative opinion as to the existence of a law is entitled to some weight.² In any event, in determining whether a repeal has been effected, the intention of the legislature in enacting the alleged repealing act is controlling even over the literal import of the words used.³ In determining what act was intended to be repealed by an express repealing provision, resort to the title of the statute has been considered proper.⁴ It has also been found that a statute which expressly repeals so much of an earlier statute as is inconsistent therewith evinces a clear legislative intent that the earlier statute shall stand in respect to its other provisions.⁵

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Footnotes

- 1 [District of Columbia v. Hutton](#), 143 U.S. 18, 12 S. Ct. 369, 36 L. Ed. 60 (1892).
- 2 [U.S. v. Bergh](#), 352 U.S. 40, 77 S. Ct. 106, 1 L. Ed. 2d 102 (1956).
- 3 [Arnett v. State](#), 168 Ind. 180, 80 N.E. 153 (1907); [In re Davis' Estate](#), 125 Vt. 446, 218 A.2d 390 (1966).
- 4 [State v. Yeats](#), 74 Fla. 509, 77 So. 262 (1917).
- 5 [Hanrick v. Patrick](#), 119 U.S. 156, 7 S. Ct. 147, 30 L. Ed. 396 (1886); [Druley v. Houdesheldt](#), 75 Wyo. 155, 296 P.2d 251 (1956).

End of Document

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73 Am. Jur. 2d Statutes § 261

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

2. Repeal

a. In General

§ 261. General repeals

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  157

Statutes may contain a provision repealing all acts and parts of acts on a designated subject or all acts and parts of acts inconsistent or in conflict with the provisions thereof.¹ Although such a provision in an act to the effect that all acts or parts of acts inconsistent or in conflict therewith are repealed has been regarded as useful in preventing doubt as to the legislative intent,² and as a strong implication, or an express recognition of the fact, that there may be acts or parts of acts on the same subject which are not thereby repealed,³ such a provision ordinarily operates only as a declaration of what would be the legal effect of the act without the provision⁴ and does not permit to be engrafted on this express declaration of legislative intent an implication of more extensive repeal.⁵ Where an act which is not a complete law within itself covering the whole subject contains a provision to the effect that all laws and parts of laws inconsistent or in conflict therewith are repealed, the repeal extends to conflicting statutes and provisions only.⁶ A resolution⁷ or statute which is not wholly inconsistent with the new act continues in force except insofar as it conflicts therewith.⁸

To effect an explicit repeal, a statute must identify the repealed statute.⁹ If it does not, a statute may still sometimes effect a repeal through the use of a general repealing clause.¹⁰ One example of such a clause is "notwithstanding any other provision of law."¹¹ Such phrases have the power to override other law.¹² A "notwithstanding" clause is a legislative indication that the statute containing that language is intended to take precedence over any preexisting or subsequently enacted legislation on the same subject.¹³

An open-ended general repealing clause carries the potential to create confusion about precisely which laws, if any, it is repealing.¹⁴ A general repealing clause operates in the twilight between the clearer extremes of explicit and implied repeals.¹⁵ A general repealing clause is explicit only in the sense that it is announcing a repeal of "all law" or "any law" or "federal laws"; its actual reach depends on an analysis of the statutory language relevant to it.¹⁶ Without that careful analysis, a general repealing clause is a blunt tool prone to repeal too little or too much.¹⁷

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Footnotes

- 1 [State v. Cantwell](#), 142 N.C. 604, 55 S.E. 820 (1906); [Commonwealth ex rel. Elkin v. Moir](#), 199 Pa. 534, 49 A. 351 (1901).
- 2 [State v. Cantwell](#), 142 N.C. 604, 55 S.E. 820 (1906); [Commonwealth ex rel. Elkin v. Moir](#), 199 Pa. 534, 49 A. 351 (1901).
- 3 [Hess v. Reynolds](#), 113 U.S. 73, 5 S. Ct. 377, 28 L. Ed. 927 (1885); [Penziner v. West American Finance Co.](#), 10 Cal. 2d 160, 74 P.2d 252 (1937); [Com. ex rel. Matthews v. Lomas](#), 302 Pa. 97, 153 A. 124, 74 A.L.R. 481 (1930).
- 4 [State ex rel. R. Newton McDowell, Inc. v. Smith](#), 334 Mo. 653, 67 S.W.2d 50 (1933); [Haspel v. O'Brien](#), 218 Pa. 146, 67 A. 123 (1907); [Hauck v. Bull](#), 79 S.D. 242, 110 N.W.2d 506 (1961).
- 5 [Holden v. State of Minnesota](#), 137 U.S. 483, 11 S. Ct. 143, 34 L. Ed. 734 (1890); [State v. Blackburn](#), 237 Iowa 1019, 22 N.W.2d 821 (1946).
- 6 [Eastern Extension, Australasia & China Telegraph Co. v. U.S.](#), 231 U.S. 326, 34 S. Ct. 57, 58 L. Ed. 250 (1913); [Jansen v. State ex rel. Downing](#), 273 Ala. 166, 137 So. 2d 47 (1962); [Penziner v. West American Finance Co.](#), 10 Cal. 2d 160, 74 P.2d 252 (1937).
- 7 [U.S. v. Bergh](#), 352 U.S. 40, 77 S. Ct. 106, 1 L. Ed. 2d 102 (1956).
- 8 [Jansen v. State ex rel. Downing](#), 273 Ala. 166, 137 So. 2d 47 (1962); [McCollum v. Snipes](#), 213 S.C. 254, 49 S.E.2d 12 (1948).
- 9 § 259.
- 10 [Miccosukee Tribe of Indians of Florida v. U.S. Army Corps of Engineers](#), 619 F.3d 1289 (11th Cir. 2010).
- 11 [Miccosukee Tribe of Indians of Florida v. U.S. Army Corps of Engineers](#), 619 F.3d 1289 (11th Cir. 2010).
- 12 [Miccosukee Tribe of Indians of Florida v. U.S. Army Corps of Engineers](#), 619 F.3d 1289 (11th Cir. 2010).
- 13 [Miccosukee Tribe of Indians of Florida v. U.S. Army Corps of Engineers](#), 619 F.3d 1289 (11th Cir. 2010).
- 14 [Miccosukee Tribe of Indians of Florida v. U.S. Army Corps of Engineers](#), 619 F.3d 1289 (11th Cir. 2010).
- 15 [Miccosukee Tribe of Indians of Florida v. U.S. Army Corps of Engineers](#), 619 F.3d 1289 (11th Cir. 2010).
As to repeal by implication see §§ 277 to 283.
- 16 [Miccosukee Tribe of Indians of Florida v. U.S. Army Corps of Engineers](#), 619 F.3d 1289 (11th Cir. 2010).
- 17 [Miccosukee Tribe of Indians of Florida v. U.S. Army Corps of Engineers](#), 619 F.3d 1289 (11th Cir. 2010).

End of Document

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73 Am. Jur. 2d Statutes § 262

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

2. Repeal

a. In General

§ 262. Effect of invalidity of repealing act

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  168

The question whether a provision in an unconstitutional statute, repealing a former law on the subject, falls with the act of which it is a part depends primarily upon the intention of the legislature.¹ Ordinarily, the repealing clause is not regarded as having been intended to remain in effect notwithstanding the invalidity of the remainder of the statute, and the repealing clause is accordingly itself regarded as invalid and inoperative as a repeal of the former law.² This rule applies to specific repeals,³ and to penal statutes,⁴ and in the case of an invalid statute containing a general repeal of all prior inconsistent acts or parts thereof, as distinguished from a specific repeal of a specified statute or part thereof, the repeal is even less readily supported.⁵ The repeal is also less readily supported where it appears that the legislature intended to repeal the former law in any event.⁶

In accordance with these principles, where it is seen that the repeal is intended to clear the way for the operation of the act containing the repealing clause and to displace the old law with the new, then if the new law is unconstitutional, the repealing clause becomes dependent and inoperative and falls with the main purpose of the act containing it.⁷ In addition, the clause of specific repeal in a substitutional statute will fall with the act of which it is part unless it is clear that the legislature would have adopted the clause of repeal without providing the new legislation.⁸ It is particularly true that the repeal of the prior law is inoperative where it is obvious that the repeal of the prior law is inserted in the act in order to secure the unobstructed operation thereof;⁹ that the repeal provision is incidental to the affirmative enactment,¹⁰ which is a mere amendment of the earlier law;¹¹ or that the purpose of the legislature would be thwarted by the repeal.¹²

Footnotes

- 1 State ex rel. James v. Schorr, 45 Del. 18, 65 A.2d 810 (1948).
- 2 State ex rel. James v. Schorr, 45 Del. 18, 65 A.2d 810 (1948).
- 3 State ex rel. James v. Schorr, 45 Del. 18, 65 A.2d 810 (1948).
- 4 Barringer v. City Council of Florence, 41 S.C. 501, 19 S.E. 745 (1894).
- 5 State v. Kolocotronis, 73 Wash. 2d 92, 436 P.2d 774 (1968).
- 6 State ex rel. James v. Schorr, 45 Del. 18, 65 A.2d 810 (1948).
- 7 People v. Fox, 294 Ill. 263, 128 N.E. 505 (1920).
- 8 State v. Blend, 121 Ind. 514, 23 N.E. 511 (1890); Mazurek v. Farmers' Mut. Fire Ins. Co. of Jamestown, 320 Pa. 33, 181 A. 570, 102 A.L.R. 798 (1935).
- 9 State v. Board of Com'rs of Cascade County, 89 Mont. 37, 296 P. 1 (1931).
- 10 People v. De Blaay, 137 Mich. 402, 100 N.W. 598 (1904).
- 11 Frost v. Corporation Commission, 278 U.S. 515, 49 S. Ct. 235, 73 L. Ed. 483 (1929).
- 12 Mazurek v. Farmers' Mut. Fire Ins. Co. of Jamestown, 320 Pa. 33, 181 A. 570, 102 A.L.R. 798 (1935).

End of Document

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73 Am. Jur. 2d Statutes § 263

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

2. Repeal

a. In General

§ 263. Effect of invalidity of repealing act—Invalidity of part of repealing act

[Topic Summary](#) | [Correlation Table](#) | [References](#)

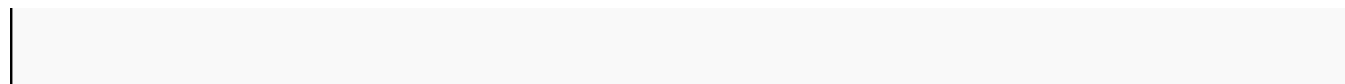
West's Key Number Digest

West's Key Number Digest, [Statutes](#)  168

Although there are no degrees of constitutionality, so that an act is either constitutional or unconstitutional, a statute can still be constitutional in one part and unconstitutional in another. If parts of the same statute are wholly independent of each other, those which are constitutional may stand while those which are unconstitutional will be rejected.¹ If in accordance with this principle a part of the new statute is invalid, the question arises as to the extent to which the repealing clause thereof is inoperative. It is generally found that a repealing clause in a statute of which a portion is unconstitutional is applicable only to laws inconsistent with the operative provisions of the act.² Repealing provisions of a statute fall so far as they relate to matters in respect to which the statute is unconstitutional.³

Observation:

The Uniform Statute and Rule Construction Act provides that if a provision of a statute or rule or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the statute or rule that can be given effect without the invalid provision or application, and to this end the provisions of the statute or rule are severable.⁴



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Footnotes

- 1 [Am. Jur. 2d, Constitutional Law § 199.](#)
- 2 [State v. Board of Com'rs of Cascade County, 89 Mont. 37, 296 P. 1 \(1931\).](#)
- 3 [American Federation of Labor v. Bain, 165 Or. 183, 106 P.2d 544, 130 A.L.R. 1278 \(1940\).](#)
- 4 [Unif. Statute and Rule Construction Act § 9.](#)

End of Document

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73 Am. Jur. 2d Statutes § 264

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

2. Repeal

a. In General

§ 264. Effect of repeal

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  149, 150, 152

Aside from matters and transactions past and closed, the general rule is that where a statute is repealed without a reenactment of the repealed law in substantially the same terms, and there is no saving clause or general statute limiting the effect of the repeal, the repealed statute, in regard to its operative effect, is considered as if it had never existed.¹ In this regard, the courts have no power to perpetuate a rule of law which the legislature has repealed.²

It is a general principle that the repeal of a statute which abrogates the common law operates to reinstate the common-law rule³ unless it appears that the legislature did not intend such reinstatement.⁴ The common-law rule may survive the repeal of a statute declaratory thereof.⁵ A federal statute provides that all acts of limitation, whether applicable to civil causes and proceedings, or to the prosecution of offenses, or for the recovery of penalties or forfeitures, embraced in the Revised Statutes and covered by the repeal contained therein, are not affected thereby but that all suits, proceedings, or prosecutions, whether civil or criminal, for causes arising, or acts done or committed prior to such repeal, may be commenced and prosecuted within the same time as if such repeal had not been made.⁶

Observation:

The Uniform Statute and Rule Construction Act provides that the repeal of a repealing statute or rule does not revive the statute or rule originally repealed or impair the effect of a savings clause in the original repealing statute or rule.⁷

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Footnotes

- 1 Ex parte McCardle, 74 U.S. 506, 19 L. Ed. 264, 1868 WL 11093 (1868); Yakima Valley Memorial Hosp. v. Washington State Dept. of Health, 654 F.3d 919 (9th Cir. 2011).
The repeal of a law means its complete abrogation by the enactment of a subsequent statute. C.C. Dillon Co. v. City of Eureka, 12 S.W.3d 322 (Mo. 2000).
As to the effect of the repeal of an adopted statute upon the statute referring to it, see § 16.
As to the effect of the postponement of the operation of a statute on the time when a repealing clause therein becomes effective, see § 252.
As to prospective or retrospective operation of repeal, see §§ 265 to 271.
- 2 State v. Tennyson, 212 Minn. 158, 2 N.W.2d 833, 139 A.L.R. 987 (1942).
- 3 Beavan v. Went, 155 Ill. 592, 41 N.E. 91 (1895); State v. General Daniel Morgan Post No. 548, Veterans of Foreign Wars, 144 W. Va. 137, 107 S.E.2d 353 (1959).
- 4 Patapsco Guano Co. v. Board of Agriculture of North Carolina, 171 U.S. 345, 18 S. Ct. 862, 43 L. Ed. 191 (1898).
- 5 Lohmann v. Lohmann, 50 N.J. Super. 37, 141 A.2d 84 (App. Div. 1958).
- 6 1 U.S.C.A. § 110.
As to limitations of actions, generally, see Am. Jur. 2d, Limitation of Actions §§ 1 et seq.
- 7 Uniform Statute and Rule Construction Act § 15.

End of Document

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73 Am. Jur. 2d Statutes § 265

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

2. Repeal

b. Prospective or Retrospective Operation

§ 265. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  149, 150, 152

In some cases, the repeal of a statute has been regarded as abrogating rights arising under a statute.¹ In any event, the unqualified repeal of a statute conferring civil rights or powers operates to deprive the citizen of all such rights or powers which are at the time of the repeal inchoate, incomplete, and unperfected² or which have not become vested.³ On the other hand, it has been found that the repeal of a statute renders it henceforth inoperative, but it does not undo or set aside the consequences of its operation while in force, even where no question of vested rights is involved, unless such a result is directed by express language or necessary implication.⁴ It has also been found that where the result will be to impair contracts or vested rights, a construction is to be avoided which will give a retrospective operation to a repealing statute.⁵ Under this rule, where a right has arisen upon a contract or a transaction in the nature of a contract, authorized by statute, and has been so far perfected that nothing remains to be done by the party asserting it, the repeal of the statute does not affect it or any action for its enforcement.⁶ Similarly, it has been found that the repeal of a statute does not take away a right of action for damages which have already accrued.⁷ Moreover, a legal exemption from, or limitation upon, liability on a particular demand, constituting a complete defense to an action, stands on quite as good ground as a right of action and is not abrogated by a repeal of the statute after accrual of the cause of action.⁸

Observation:

Federal law provides that the repeal of any statute will not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act expressly provides, and such statute will be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.⁹

CUMULATIVE SUPPLEMENT

Cases:

When a statute is repealed, its repeal reaches back in time to eliminate any authority that existed under the statute. [City of Montpelier v. Barnett](#), 2012 VT 32, 49 A.3d 120 (Vt. 2012).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Trippet v. State](#), 149 Cal. 521, 86 P. 1084 (1906).
As to the prospective or retrospective operation of statutes, generally, see §§ [235](#) to [241](#).
- 2 [Hertz v. Woodman](#), 218 U.S. 205, 30 S. Ct. 621, 54 L. Ed. 1001 (1910).
- 3 Am. Jur. 2d, Constitutional Law § 748.
- 4 [Chism v. Phelps](#), 228 Ark. 936, 311 S.W.2d 297, 77 A.L.R.2d 329 (1958).
- 5 [Moultrie County v. Rockingham Ten-Cent Sav. Bank](#), 92 U.S. 631, 23 L. Ed. 631, 1875 WL 17803 (1875);
[Massa v. Natri](#), 125 Conn. 144, 3 A.2d 839, 120 A.L.R. 939 (1939).
- 6 [Pacific Mail S.S. Co. v. Joliffe](#), 69 U.S. 450, 17 L. Ed. 805, 1864 WL 6611 (1864).
- 7 [Cusick v. Feldpausch](#), 259 Mich. 349, 243 N.W. 226 (1932); [Lewis v. Pennsylvania R. Co.](#), 220 Pa. 317, 69 A. 821 (1908).
- 8 [Massa v. Natri](#), 125 Conn. 144, 3 A.2d 839, 120 A.L.R. 939 (1939).
- 9 1 U.S.C.A. § 109.

End of Document

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73 Am. Jur. 2d Statutes § 266

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

2. Repeal

b. Prospective or Retrospective Operation

§ 266. General constitutional and statutory saving provisions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  149, 150, 152

Provisions are to be found in the constitutions of some states that materially modify the common-law rule of construction as to the effect of the repeal of a statute; sometimes, this result is accomplished by general statutes limiting the effect of repeals¹ or by saving clauses in the repealing acts themselves.² Such general saving provisions are declarative of a continuing policy of the state that the repeal of any statute shall not release or extinguish any liability incurred or affect any right accrued or claim arising before the repeal takes effect unless the repealing act expressly otherwise provides.³

CUMULATIVE SUPPLEMENT

Cases:

United States Supreme Court has long rejected interpretations of sweeping saving clauses that prove absolutely inconsistent with the provisions of the act in which they are found. [Atlantic Richfield Company v. Christian](#), 140 S. Ct. 1335 (2020).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Davis v. General Motors Acceptance Corp.](#), 176 Neb. 865, 127 N.W.2d 907 (1964).
- 2 [§ 267.](#)
- 3 [Western Union Telegraph Co. v. Louisville & N.R. Co.](#), 258 U.S. 13, 42 S. Ct. 258, 66 L. Ed. 437 (1922).

End of Document

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73 Am. Jur. 2d Statutes § 267

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

2. Repeal

b. Prospective or Retrospective Operation

§ 267. Express saving provisions in repealing statutes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  149, 150, 152

Frequently, there are express saving clauses in repealing statutes.¹ Such clauses continue the law in force as to all cases to which they apply.²

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Footnotes

- ¹ [Bradley v. U.S.](#), 410 U.S. 605, 93 S. Ct. 1151, 35 L. Ed. 2d 528 (1973).
- ² [Gilbertson v. Ballard](#), 125 Iowa 420, 101 N.W. 108 (1904); [Henley v. Myers](#), 76 Kan. 723, 93 P. 168 (1907), [aff'd](#), 215 U.S. 373, 30 S. Ct. 148, 54 L. Ed. 240 (1910).

End of Document

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73 Am. Jur. 2d Statutes § 268

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

2. Repeal

b. Prospective or Retrospective Operation

§ 268. Pre-existing remedies as affected by repeal

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  149, 150, 152

Changes in procedural rules may often be applied in suits arising before their enactment without raising concerns about retroactivity. Thus, a legislature may retroactively cure inequities in statutes as long as vested rights are not disturbed.¹ It is a general rule that where a statute giving a particular remedy is unqualifiedly repealed, the remedy is abrogated.² Indeed, where a statute giving a special remedy is repealed by a later act which substitutes nothing in its place, the effect is to obliterate such statute as completely as if it had never been passed.³

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Footnotes

- ¹ [Am. Jur. 2d, Constitutional Law § 750.](#)
- ² [State of South Carolina v. Gaillard, 101 U.S. 433, 25 L. Ed. 937, 1879 WL 16648 \(1879\).](#)
- ³ [People ex rel. Eitel v. Lindheimer, 371 Ill. 367, 21 N.E.2d 318, 124 A.L.R. 1472 \(1939\).](#)

End of Document

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73 Am. Jur. 2d Statutes § 269

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

2. Repeal

b. Prospective or Retrospective Operation

§ 269. Pending actions as affected by repeal

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  149, 150, 152

Under the common law, if a statute is unconditionally repealed without a saving clause in favor of pending suits, all pending proceedings thereunder are terminated.¹ This is true of the repeal of a law relating to procedure,² or of a law conferring jurisdiction, in which case the right to proceed further in an action that is pending but undetermined at the time of the repeal is taken away.³ Furthermore, in the absence of any constitutional saving clause, a judgment rendered by virtue of the terms of a statute which is repealed is void although the proceedings may have been commenced before the repeal.⁴ However, general saving laws may expressly provide that no pending action or proceeding shall be affected by a repealing statute except that subsequent proceedings therein must conform to such statute as far as it is applicable.⁵

Observation:

The Uniform Statute and Rule Construction Act provides that except as to procedural provisions, an amendment or repeal of a civil statute or rule does not affect a pending action or proceeding or a right accrued before the amendment or repeal takes effect. In addition, except as to procedural provisions, a pending civil action or proceeding may be completed, and a right accrued may be enforced as if the statute or rule had not been amended or repealed. However, if a penalty for a violation of a statute or rule is reduced by an amendment, the penalty, if not already imposed, must be imposed under the statute or rule as amended.⁶

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Footnotes

- 1 State of South Carolina v. Gaillard, 101 U.S. 433, 25 L. Ed. 937, 1879 WL 16648 (1879); State ex rel. Arnold v. Revels, 109 So. 2d 1 (Fla. 1959).
- 2 Bejger v. Zawadzki, 252 Mich. 14, 232 N.W. 746 (1930).
- 3 De La Rama S S Co v. U S, 344 U.S. 386, 73 S. Ct. 381, 97 L. Ed. 422 (1953).
- 4 Whitley v. Black, 9 N.C. 179, 2 Hawks 179, 1822 WL 237 (1822).
- 5 Cowden v. Williams, 32 Ariz. 407, 259 P. 670, 55 A.L.R. 1059 (1927).
- 6 Uniform Statute and Rule Construction Act § 16.

End of Document

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73 Am. Jur. 2d Statutes § 270

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

2. Repeal

b. Prospective or Retrospective Operation

§ 270. Appeal

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  149, 150, 152

The repeal of a particular act pending an appeal may be precluded from impairing a judgment previously acquired because of the operation of a statutory saving provision.¹ Even in the absence of a saving clause, where the appeal is not from the judgment but from an order denying a motion for a new trial, a repeal of the statute on which the judgment was based has been found not to impair the judgment.² However, where the pendency of an appeal or writ of error has the effect of preventing the judgment of the court below from becoming final, the general rule of common law that the repeal of a statute will destroy all rights of action based thereon which have not proceeded to final judgment is applicable.³

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Footnotes

- ¹ [People ex rel. Forest Commission v. Campbell](#), 152 N.Y. 51, 46 N.E. 176 (1897).
- ² [People v. Bank of San Luis Obispo](#), 159 Cal. 65, 112 P. 866 (1910).
- ³ [People ex rel. Eitel v. Lindheimer](#), 371 Ill. 367, 21 N.E.2d 318, 124 A.L.R. 1472 (1939).

End of Document

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73 Am. Jur. 2d Statutes § 271

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

2. Repeal

b. Prospective or Retrospective Operation

§ 271. Simultaneous repeal and reenactment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  149, 150, 152, 161(3), 166

A.L.R. Library

[Effect of simultaneous repeal and re-enactment of all, or part, of legislative act, 77 A.L.R.2d 336](#)

Where a statute is repealed by a new statute which relates to the same subject matter, and which reenacts substantially the provisions of the earlier statute, and the repeal and reenactment occur simultaneously, the provisions of the original statute which are reenacted in the new statute are not interrupted in their operation by the so-called repeal; they are regarded as having been continuously in force from the date they were originally enacted.¹ Thus, the simultaneous repeal and reenactment of substantially the same statutory provision is to be construed not as a true repeal but as an affirmation and continuation of the original provision.² All rights and interests arising under the original statute are therefore preserved;³ by the same token, liabilities which have arisen under a statute are not affected by its repeal and reenactment.⁴ Where a statute has been repealed and substantially reenacted by a statute which contains additions to or changes in the original statute, it follows that while the reenacted provisions are deemed to have been in operation continuously from the original enactment, the additions or changes are treated as amendments effective from the time the new statute goes into effect.⁵

In many jurisdictions a statute or the constitution contains express provisions concerning the effect of a simultaneous repeal and reenactment of a statute, and these provisions usually adopt the common-law rule.⁶

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Footnotes

- 1 [Bear Lake & River Waterworks & Irrigation Co. v. Garland](#), 164 U.S. 1, 17 S. Ct. 7, 41 L. Ed. 327 (1896); [Wieslander v. Iowa Dept. of Transp.](#), 596 N.W.2d 516 (Iowa 1999).
- 2 [Goldenberg v. Dome Condominium Ass'n](#), 376 So. 2d 37 (Fla. Dist. Ct. App. 3d Dist. 1979).
- 3 [King v. Uhlmann](#), 103 Ariz. 136, 437 P.2d 928 (1968).
- 4 [State v. Webb](#), 76 Idaho 162, 279 P.2d 634 (1955).
- 5 [Bear Lake & River Waterworks & Irrigation Co. v. Garland](#), 164 U.S. 1, 17 S. Ct. 7, 41 L. Ed. 327 (1896); [Kratochvil v. Motor Club Ins. Ass'n](#), 255 Neb. 977, 588 N.W.2d 565 (1999).
- 6 [Hacken v. Isenberg](#), 288 Ill. 589, 124 N.E. 306 (1919); [Board of Com'rs of Harvey County v. State Commission of Revenue and Taxation](#), 150 Kan. 458, 94 P.2d 332 (1939).

End of Document

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73 Am. Jur. 2d Statutes § 272

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

3. Repeal by Implication

a. In General

§ 272. Application of doctrine of implied repeal

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  158

The fact that an act does not contain either a general or specific repealing clause does not prevent its repealing a prior act.¹ Thus, an act may be repealed by implication as well as by express terms.² A portion of a statute may also be repealed by implication.³ Under the doctrine of repeal by implication, the earlier statute is treated as being completely replaced by the later statute, and any provision of the earlier statute which is repeated in the later statute is deemed to be a new enactment and not a continuation of the former provision. If the later statute does not impliedly repeal the earlier statute, it will be treated as an amendment of the earlier statute.⁴ The doctrine of repeal by implication rests on the ground that the last expression of the legislative will ought to control.⁵

The repeal of a statute by implication is not favored,⁶ especially when the executive's law enforcement powers are at issue.⁷ The presumption is against repeal by implication where express terms are not used, and the statutes are not irreconcilable.⁸ Courts must first assiduously attempt to try to construe two statutes in harmony before concluding that one impliedly repeals the other.⁹ The implication of a repeal, in order to be operative, must be necessary,¹⁰ or necessarily follow from the language used,¹¹ because the last or dominant statute admits of no other reasonable construction.¹² Moreover, if two constructions are possible, that one will be adopted which operates to support the earlier act rather than to repeal it by implication.¹³

CUMULATIVE SUPPLEMENT

Cases:

Unlawful acts, performed long enough and with sufficient vigor, are never enough to amend the law. [McGirt v. Oklahoma](#), 140 S. Ct. 2452 (2020).

Repeals of statutes by implication are not favored and are a rarity. [Maine Community Health Options v. United States](#), 140 S. Ct. 1308 (2020).

Presented with two federal statutes, a court will regard each as effective unless Congress intention to repeal is clear and manifest or the two laws are irreconcilable. [Maine Community Health Options v. United States](#), 140 S. Ct. 1308 (2020).

In approaching a claimed conflict between two federal statutes, the court comes armed with the strong presumption that repeals by implication are disfavored and that Congress will specifically address preexisting law when it wishes to suspend its normal operations in a later statute. [Epic Systems Corp. v. Lewis](#), 138 S. Ct. 1612 (2018).

Under Massachusetts law, a statute is not to be deemed to repeal or supersede a prior statute in whole or in part in the absence of express words to that effect or of clear implication, because it is by no means clear that, as between two successive acts whose literal interpretations clash, the earlier must yield to the latter; indeed, the later statute is often intended to defer to the earlier. [Travers v. Flight Services & Systems, Inc.](#), 808 F.3d 525 (1st Cir. 2015).

Repeal of a statute by implication is recognized in only two situations: (1) where the statutes are in irreconcilable conflict, and (2) where the legislature takes up the whole subject anew, covering the entire subject matter of the earlier statute and adding provisions clearly showing that it was intended as a substitute for the former provision. [Carroll v. Hobbs](#), 2014 Ark. 395, 442 S.W.3d 834 (2014).

Repeals of statutes by implication are strongly disfavored; a statute will only be impliedly repealed when two enactments cannot stand together. [Sesley v. State](#), 2011 Ark. 104, 380 S.W.3d 390 (2011).

Absent an express legislative statement, courts have disfavored repeal by implication and apply a strong presumption against it. [Bowler v. State](#), 2014 ME 157, 108 A.3d 1257 (Me. 2014).

Repeal of a statute by implication is disfavored, and the court will not find repeal by implication where earlier and later statutes may logically stand side by side and be held valid. [O.S.T. ex rel. G.T. v. BlueShield](#), 335 P.3d 416 (Wash. 2014).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Routh v. Richards](#), 103 Fla. 752, 138 So. 69 (1931).
- 2 [U.S. v. Belt](#), 319 U.S. 521, 63 S. Ct. 1278, 87 L. Ed. 1559 (1943); [Ahlmeyer v. Nevada System of Higher Educ.](#), 555 F.3d 1051, 241 Ed. Law Rep. 545 (9th Cir. 2009); [State v. Langdon](#), 330 Or. 72, 999 P.2d 1127 (2000).
- 3 [State v. Atlantic Coast Line R. Co.](#), 56 Fla. 617, 47 So. 969 (1908).
- 4 [State v. Bunn](#), 50 Haw. 351, 440 P.2d 528 (1968).
- 5 [Stop Youth Addiction, Inc. v. Lucky Stores, Inc.](#), 17 Cal. 4th 553, 71 Cal. Rptr. 2d 731, 950 P.2d 1086 (1998). Because the doctrine of implied repeal provides that the most recently enacted statute expresses the will of the Legislature, application of the doctrine is appropriate in those limited situations where it is necessary to effectuate the intent of drafters of the newly enacted statute. [Schatz v. Allen Matkins Leck Gamble & Mallory LLP](#), 45 Cal. 4th 557, 87 Cal. Rptr. 3d 700, 198 P.3d 1109 (2009), as modified, (Mar. 11, 2009).

- 6 Hui v. Castaneda, 130 S. Ct. 1845, 176 L. Ed. 2d 703 (2010); National Ass'n of Home Builders v. Defenders of Wildlife, 551 U.S. 644, 127 S. Ct. 2518, 168 L. Ed. 2d 467 (2007); Cook County, Ill. v. U.S. ex rel. Chandler, 538 U.S. 119, 123 S. Ct. 1239, 155 L. Ed. 2d 247 (2003); Traynor v. Turnage, 485 U.S. 535, 108 S. Ct. 1372, 99 L. Ed. 2d 618, 1 A.D.D. 469, 45 Ed. Law Rep. 951 (1988); Rodriguez v. U.S., 480 U.S. 522, 107 S. Ct. 1391, 94 L. Ed. 2d 533 (1987); Randall v. Loftsgaarden, 478 U.S. 647, 106 S. Ct. 3143, 92 L. Ed. 2d 525 (1986); Diaz-Ramos v. Hyundai Motor Co., 501 F.3d 12 (1st Cir. 2007); Ste. Marie v. Riverside County Regional Park and Open-Space District, 46 Cal. 4th 282, 93 Cal. Rptr. 3d 369, 206 P.3d 739 (2009). A statute dealing with a narrow, precise, and specific subject is not submerged by a later enacted statute covering a more generalized spectrum unless: (1) the later statute expressly contradicts the original act, or (2) such a construction is absolutely necessary in order that the words of the later statute shall have any meaning at all; the courts are not at liberty to pick and choose among congressional enactments, and when two statutes are capable of coexistence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective. Traynor v. Turnage, 485 U.S. 535, 108 S. Ct. 1372, 99 L. Ed. 2d 618, 1 A.D.D. 469, 45 Ed. Law Rep. 951 (1988).
- 7 Bialek v. Mukasey, 529 F.3d 1267 (10th Cir. 2008).
- 8 California Correctional Peace Officers' Assn. v. State, 181 Cal. App. 4th 1454, 105 Cal. Rptr. 3d 566 (1st Dist. 2010).
- 9 Miccosukee Tribe of Indians of Florida v. U.S. Army Corps of Engineers, 619 F.3d 1289 (11th Cir. 2010).
- 10 Posadas v. National City Bank of New York, 296 U.S. 497, 56 S. Ct. 349, 80 L. Ed. 351 (1936).
- 11 Haubrich v. Johnson, 242 Iowa 1236, 50 N.W.2d 19 (1951).
- 12 Continental Ins. Co. v. Simpson, 8 F.2d 439 (C.C.A. 4th Cir. 1925); Haubrich v. Johnson, 242 Iowa 1236, 50 N.W.2d 19 (1951).
- 13 People, by Kerner, v. United Medical Service, 362 Ill. 442, 200 N.E. 157, 103 A.L.R. 1229 (1936); Haubrich v. Johnson, 242 Iowa 1236, 50 N.W.2d 19 (1951).

End of Document

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73 Am. Jur. 2d Statutes § 273

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

3. Repeal by Implication

a. In General

§ 273. Legislative intent as controlling factor

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  158

The question as to whether a new act works an implied repeal of an existing statute is one of legislative intention in the enactment of the alleged repealing act.¹ In this regard, one statute will not repeal another by implication unless it appears from the terms and provisions of the later act that it was the intention of the legislature to enact a new law in place of the old.²

The repeal of a statute by implication will not be found unless an intent to repeal is clear and manifest.³ That is, an intent to repeal by implication, to be effective, must appear⁴ clearly,⁵ manifestly,⁶ and with cogent force.⁷ Furthermore, a repeal by implication will be carried no further than is required to gratify the legislative intent manifested in the later act.⁸

In determining whether one statute is impliedly repealed by another, it is regarded as proper to take into consideration subsequent legislative action,⁹ particularly as to action of the same legislature which enacted the alleged repealing statute.¹⁰

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Footnotes

- ¹ [Posadas v. National City Bank of New York](#), 296 U.S. 497, 56 S. Ct. 349, 80 L. Ed. 351 (1936); [Miccosukee Tribe of Indians of Florida v. U.S. Army Corps of Engineers](#), 619 F.3d 1289 (11th Cir. 2010).
- ² [St. Martin Evangelical Lutheran Church v. South Dakota](#), 451 U.S. 772, 101 S. Ct. 2142, 68 L. Ed. 2d 612 (1981).

- 3 Hui v. Castaneda, 130 S. Ct. 1845, 176 L. Ed. 2d 703 (2010); National Ass'n of Home Builders v. Defenders of Wildlife, 551 U.S. 644, 127 S. Ct. 2518, 168 L. Ed. 2d 467 (2007); Rodriguez v. U.S., 480 U.S. 522, 107 S. Ct. 1391, 94 L. Ed. 2d 533 (1987); Hagan v. Rogers, 570 F.3d 146 (3d Cir. 2009); Voss v. Tranquilino, 206 N.J. 93, 19 A.3d 470 (2011).
- 4 Lint v. Bennett, 251 Iowa 1193, 104 N.W.2d 564 (1960).
- 5 Rodriguez v. U.S., 480 U.S. 522, 107 S. Ct. 1391, 94 L. Ed. 2d 533 (1987); Patten v. U.S., 116 F.3d 1029 (4th Cir. 1997); Voss v. Tranquilino, 206 N.J. 93, 19 A.3d 470 (2011).
- 6 Watt v. Alaska, 451 U.S. 259, 101 S. Ct. 1673, 68 L. Ed. 2d 80 (1981); Patten v. U.S., 116 F.3d 1029 (4th Cir. 1997).
- 7 Haubrich v. Johnson, 242 Iowa 1236, 50 N.W.2d 19 (1951).
- 8 Hicks Body Co. v. Ward Body Works, Inc., 233 F.2d 481 (8th Cir. 1956).
- 9 Cape Girardeau County Court v. U.S., 118 U.S. 68, 6 S. Ct. 951, 30 L. Ed. 73 (1886); Tipton v. Sands, 103 Mont. 1, 60 P.2d 662, 106 A.L.R. 474 (1936).
- 10 Tipton v. Sands, 103 Mont. 1, 60 P.2d 662, 106 A.L.R. 474 (1936).

End of Document

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73 Am. Jur. 2d Statutes § 274

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

3. Repeal by Implication

a. In General

§ 274. Determination of legislative intent

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  158

A finding of repeal of statute by implication requires clear and compelling evidence of that legislative intent; and such intent must be free from reasonable doubt.¹ The legislative intent as to repeal by implication is determined in accordance with the accepted rules of construction of statutes.² Among the matters which have been regarded as properly considered are the nature of the several acts involved, the history of such acts, the state of the law when they were passed, the history of the times,³ or the facts and circumstances surrounding their enactment,⁴ as well as the language⁵ and respective titles thereof,⁶ and the objects and purposes sought to be attained.⁷ The numerous rules for statutory construction on the subject of repeal of an earlier by a later statute are subservient to the supreme rule that the purpose of the legislature should be vitalized by judicial construction where such purpose can be discovered from the whole enactment or in connection with other statutes.⁸

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Footnotes

- ¹ [Voss v. Tranquilino](#), 206 N.J. 93, 19 A.3d 470 (2011).
- ² [Posadas v. National City Bank of New York](#), 296 U.S. 497, 56 S. Ct. 349, 80 L. Ed. 351 (1936).
- ³ [Watt v. Alaska](#), 451 U.S. 259, 101 S. Ct. 1673, 68 L. Ed. 2d 80 (1981); [U.S. v. Tomeny](#), 144 F.3d 749 (11th Cir. 1998).
- ⁴ [State v. Reed](#), 34 N.J. 554, 170 A.2d 419, 91 A.L.R.2d 797 (1961).
- ⁵ [U.S. v. Tomeny](#), 144 F.3d 749 (11th Cir. 1998); [California Auto. Assigned Risk Plan v. Garamendi](#), 234 Cal. App. 3d 1486, 286 Cal. Rptr. 257 (2d Dist. 1991).

- 6 [State v. Martinez, 43 Idaho 180, 250 P. 239 \(1926\).](#)
As to the necessity of mentioning in the title of a statute the various acts which it repeals by implication, see § 50.
- 7 [City of Jacksonville v. Bowden, 67 Fla. 181, 64 So. 769 \(1914\); State v. Martinez, 43 Idaho 180, 250 P. 239 \(1926\).](#)
- 8 [City of Madison v. Southern Wisconsin Ry. Co., 156 Wis. 352, 146 N.W. 492, 10 A.L.R. 910 \(1914\), aff'd, 240 U.S. 457, 36 S. Ct. 400, 60 L. Ed. 739 \(1916\).](#)

End of Document

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73 Am. Jur. 2d Statutes § 275

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

3. Repeal by Implication

a. In General

§ 275. Presumptions applicable

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  158

The courts will not presume that the legislature intended a repeal by implication.¹ Indeed, the presumption is always against the intention to repeal where express terms are not used² and where effect can reasonably be given to both statutes.³

Observation:

The presumption against repeal of a statute by implication applies with even greater force to an appropriations bill because legislators are entitled to assume that they only appropriate money for lawful purposes.⁴ Congress has the power to effect a repeal of a statute through an appropriations bill; it just needs to be clear that it is doing so.⁵

Footnotes

- 1 California Auto. Assigned Risk Plan v. Garamendi, 234 Cal. App. 3d 1486, 286 Cal. Rptr. 257 (2d Dist. 1991); Rivera v. Commissioner of Correction, 254 Conn. 214, 756 A.2d 1264 (2000).
- 2 Graham v. Goodcell, 282 U.S. 409, 51 S. Ct. 186, 75 L. Ed. 415 (1931); U.S. v. LeMoure, 474 F.3d 37 (1st Cir. 2007); California Correctional Peace Officers' Assn. v. State, 181 Cal. App. 4th 1454, 105 Cal. Rptr. 3d 566 (1st Dist. 2010).
- 3 U.S. v. Burroughs, 289 U.S. 159, 53 S. Ct. 574, 77 L. Ed. 1096 (1933); Rivera v. Commissioner of Correction, 254 Conn. 214, 756 A.2d 1264 (2000).
- 4 Miccosukee Tribe of Indians of Florida v. U.S. Army Corps of Engineers, 619 F.3d 1289 (11th Cir. 2010).
- 5 Miccosukee Tribe of Indians of Florida v. U.S. Army Corps of Engineers, 619 F.3d 1289 (11th Cir. 2010).

End of Document

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73 Am. Jur. 2d Statutes § 276

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

3. Repeal by Implication

a. In General

§ 276. Repeal by new constitutional provision

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  158, 159, 161(1)

A statute in force when a constitutional amendment is adopted ordinarily is not affected by it unless the new constitution or the new amendment is clearly and irreconcilably in conflict with the statute.¹ In such case, the statute may be regarded as repealed by the constitutional provision by implication.² However, a statute is not repealed by a constitutional provision which is not self-executing.³ Moreover, the implied repeal of a statute by the adoption of a conflicting constitutional provision is usually regarded as prospective only in its operation.⁴ Also, the repeal is effective only to the extent of the inconsistency.⁵

Repeals of statutes by later constitutional provisions by implication are not favored,⁶ and in order to operate as such a repeal, the courts require that the repugnancy between the statute and the constitution be obvious or necessary. Under this rule, if the statute and constitutional provision, by any fair course of reasoning, can be reconciled or harmonized, this must be done and the statute allowed to stand.⁷

The final test in determining whether a statute is repealed by implication by a constitutional provision is whether the legislature, under the new constitutional provision, has the present right to enact statutes substantially like the statute in question.⁸ Accordingly, if the authority of the legislature to enact a particular statute is derived solely from a particular constitutional provision or amendment, a repeal of such provision or amendment operates as a repeal of the statute.⁹

Footnotes

- 1 Am. Jur. 2d, Constitutional Law § 50.
- 2 U.S. v. Mack, 295 U.S. 480, 55 S. Ct. 813, 79 L. Ed. 1559 (1935).
- 3 In re Advisory Opinion to the Governor, 132 So. 2d 163 (Fla. 1961).
- 4 U.S. v. Mack, 295 U.S. 480, 55 S. Ct. 813, 79 L. Ed. 1559 (1935).
- 5 Nuckolls v. Bank of California, Nat. Ass'n, 10 Cal. 2d 266, 74 P.2d 264, 114 A.L.R. 708 (1937).
- 6 Murray v. State, 91 Ohio St. 220, 110 N.E. 471 (1915).
- 7 In re Advisory Opinion to the Governor, 132 So. 2d 163 (Fla. 1961).
- 8 Monaghan v. Lewis, 21 Del. 218, 5 Penne. 218, 59 A. 948 (1905).
- 9 U.S. v. Constantine, 296 U.S. 287, 56 S. Ct. 223, 80 L. Ed. 233 (1935); U.S. v. Chambers, 291 U.S. 217, 54 S. Ct. 434, 78 L. Ed. 763, 89 A.L.R. 1510 (1934).

End of Document

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73 Am. Jur. 2d Statutes § 277

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

3. Repeal by Implication

b. Effect of Particular Circumstances

§ 277. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  158

The rule that repeals by implication are not favored is particularly applicable where inveterate usage forbids the implication.¹ Inasmuch as it would be most unreasonable to suppose that a legislative body intended, by doubtful inference, to repeal salutary provisions in a very early statute which, in numerous enactments, it has cautiously preserved,² the principle that the law does not favor repeals by implication is of special application in the case of an important public statute of long standing.³

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Footnotes

- 1 [General Motors Acceptance Corporation v. U.S.](#), 286 U.S. 49, 52 S. Ct. 468, 76 L. Ed. 971, 82 A.L.R. 600 (1932).
- 2 [Fussell v. Gregg](#), 113 U.S. 550, 5 S. Ct. 631, 28 L. Ed. 993 (1885).
- 3 [Hicks Body Co. v. Ward Body Works, Inc.](#), 233 F.2d 481 (8th Cir. 1956).

End of Document

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73 Am. Jur. 2d Statutes § 278

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

3. Repeal by Implication

b. Effect of Particular Circumstances

§ 278. Inconsistency

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  159

If an act is so repugnant to, or so contradictory of, or so irreconcilably in conflict with, a prior act that the two acts cannot be harmonized in order to effect the purpose of their enactment, the later act operates without any repealing clause as a repeal of the first to the extent of the irreconcilable inconsistency.¹ It is reasonable to conclude that the legislature, in passing a statute, did not intend to interfere with or abrogate any former law relating to the same matter unless the repugnancy between the two is irreconcilable.² Except where an act covers the entire subject matter of earlier legislation, is complete in itself, and is evidently intended to supersede the prior legislation on the subject,³ a later act does not by implication repeal an earlier act unless there is such a clear,⁴ manifest,⁵ controlling,⁶ necessary,⁷ positive,⁸ unavoidable,⁹ and irreconcilable inconsistency and repugnancy that the two acts cannot, by a fair and reasonable construction, be reconciled and given effect¹⁰ or enforced concurrently.¹¹

On the other hand, if a later act prescribes a new scheme or approach, it will supersede a prior treatment of the matter, especially if the policies of the statutes cannot coexist.¹² Nonetheless, a conflict that is merely cosmetic or that relates to anything less than the operative legal concepts is not enough; there must be a clear repugnancy between the two provisions.¹³

CUMULATIVE SUPPLEMENT

Cases:

Implicit repeal may be found when a later statute encompasses the entire subject matter of an earlier one, or when a later statute is inconsistent with or repugnant to an earlier one. [MSAD 6 Board of Directors v. Town of Frye Island, 2020 ME 45, 229 A.3d 514 \(Me. 2020\)](#).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Carcieri v. Salazar, 555 U.S. 379, 129 S. Ct. 1058, 172 L. Ed. 2d 791 \(2009\)](#); [J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred Intern., Inc., 534 U.S. 124, 122 S. Ct. 593, 151 L. Ed. 2d 508 \(2001\)](#); [Posadas v. National City Bank of New York, 296 U.S. 497, 56 S. Ct. 349, 80 L. Ed. 351 \(1936\)](#); [Diaz-Ramos v. Hyundai Motor Co., 501 F.3d 12 \(1st Cir. 2007\)](#); [Schatz v. Allen Matkins Leck Gamble & Mallory LLP, 45 Cal. 4th 557, 87 Cal. Rptr. 3d 700, 198 P.3d 1109 \(2009\)](#), as modified, (Mar. 11, 2009).
Statutes are in "irreconcilable conflict" only if there is a positive repugnancy between the statutes, such that one is eviscerated by the other. [Empacadora de Carnes de Fresnillo, S.A. de C.V., v. Curry, 476 F.3d 326 \(5th Cir. 2007\)](#).
- 2 [Matsushita Elec. Indus. Co., Ltd. v. Epstein, 516 U.S. 367, 116 S. Ct. 873, 134 L. Ed. 2d 6 \(1996\)](#).
- 3 [§ 279](#)
- 4 [Moyle v. Director, Office of Workers' Compensation Programs, 147 F.3d 1116 \(9th Cir. 1998\)](#); [Donajkowski v. Alpena Power Co., 460 Mich. 243, 596 N.W.2d 574 \(1999\)](#).
- 5 [Hicks Body Co. v. Ward Body Works, Inc., 233 F.2d 481 \(8th Cir. 1956\)](#); [City of Richmond v. Board of Sup'rs of Henrico County, 199 Va. 679, 101 S.E.2d 641 \(1958\)](#).
- 6 [City of New Orleans v. Liberty Shop, 162 La. 39, 110 So. 81 \(1926\)](#); [City of Richmond v. Board of Sup'rs of Henrico County, 199 Va. 679, 101 S.E.2d 641 \(1958\)](#).
- 7 [Licha v. Northern Pac. Ry. Co., 201 Minn. 427, 276 N.W. 813 \(1937\)](#).
- 8 [Blanchette v. Connecticut General Ins. Corporations, 419 U.S. 102, 95 S. Ct. 335, 42 L. Ed. 2d 320 \(1974\)](#); [U.S. v. Tackett, 113 F.3d 603, 1997 FED App. 0157P \(6th Cir. 1997\)](#); [Flo-Sun, Inc. v. Kirk, 783 So. 2d 1029 \(Fla. 2001\)](#).
- 9 [Carl Ronnie Daricek Living Trust v. Hancock County ex rel. Board of Sup'rs, 34 So. 3d 587 \(Miss. 2010\)](#).
- 10 [Hicks Body Co. v. Ward Body Works, Inc., 233 F.2d 481 \(8th Cir. 1956\)](#); [Stop Youth Addiction, Inc. v. Lucky Stores, Inc., 17 Cal. 4th 553, 71 Cal. Rptr. 2d 731, 950 P.2d 1086 \(1998\)](#).
- 11 [Lewis v. U.S., 244 U.S. 134, 37 S. Ct. 570, 61 L. Ed. 1039 \(1917\)](#).
- 12 [Two Guys From Harrison, Inc. v. Furman, 32 N.J. 199, 160 A.2d 265 \(1960\)](#).
- 13 [B & G Const. Co., Inc. v. Director, Office of Workers' Compensation Programs, 662 F.3d 233 \(3d Cir. 2011\)](#).

End of Document

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73 Am. Jur. 2d Statutes § 279

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

3. Repeal by Implication

b. Effect of Particular Circumstances

§ 279. Identity of object or subject

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  161(1)

For one statute to repeal another by implication they must both relate to the same object or purpose.¹ In other words, where the evils which an act is designed to remedy are different from those for which a prior act provides,² or where there is a difference in the whole purview of two statutes, there is no repeal by implication.³ Similarly, to effect an implied repeal of one statute by another, they must both relate to the same subject⁴ and cover the same situations.⁵ Also, some courts require some express reference to the previous statute.⁶ However, an implied repeal will be found where the latter act covers the whole subject of the earlier one and is clearly intended as a substitute.⁷

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Footnotes

- 1 U.S. v. Clafflin, 97 U.S. 546, 24 L. Ed. 1082, 1878 WL 18337 (1878); V-1 Oil Co. v. Idaho State Tax Com'n, 134 Idaho 716, 9 P.3d 519 (2000).
- 2 Sykes v. People, 127 Ill. 117, 19 N.E. 705 (1889); State v. McDonald, 1 Wash. App. 592, 463 P.2d 174 (Div. 1 1969).
- 3 State v. Martinez, 43 Idaho 180, 250 P. 239 (1926).
- 4 U.S. v. Clafflin, 97 U.S. 546, 24 L. Ed. 1082, 1878 WL 18337 (1878); Department of Personnel Administration v. Superior Court, 5 Cal. App. 4th 155, 6 Cal. Rptr. 2d 714 (3d Dist. 1992); V-1 Oil Co. v. Idaho State Tax Com'n, 134 Idaho 716, 9 P.3d 519 (2000).

- 5 Lowden v. Luther, 1941 OK 412, 190 Okla. 31, 120 P.2d 359 (1941); McCollum v. Snipes, 213 S.C. 254, 49 S.E.2d 12 (1948).
- 6 Saunders v. State, 8 Md. App. 143, 258 A.2d 776 (1969).
- 7 Carcieri v. Salazar, 555 U.S. 379, 129 S. Ct. 1058, 172 L. Ed. 2d 791 (2009); Branch v. Smith, 538 U.S. 254, 123 S. Ct. 1429, 155 L. Ed. 2d 407 (2003); Diaz-Ramos v. Hyundai Motor Co., 501 F.3d 12 (1st Cir. 2007).

End of Document

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73 Am. Jur. 2d Statutes § 280

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration


3. Repeal by Implication

b. Effect of Particular Circumstances

§ 280. Time of enactment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  161(1), 161(2)

The fact that two statutes are passed at about the same time,¹ or at the same session of the legislature,² is strong evidence that they are intended to stand together. Thus, where provisions alleged to conflict are enacted on the same day,³ or at nearly the same time, the presumption against implied repeals is especially strong.⁴ Indeed, where two acts relating to the same subject are under consideration and enacted at about the same time or at the same session of the legislature, the courts will exhaust all the resources of interpretation before coming to the conclusion that there is an irreconcilable repugnancy between them and that one repeals the other.⁵ Such an exhaustive attempt will be made even though, to give effect to both acts, it becomes necessary to engraft one on the other or incorporate the earlier into the later act as an exception to its provisions.⁶ On the other hand, the fact that two statutes are passed at the same session of the legislature does not preclude the operation of the rule of repeal by implication.⁷

CUMULATIVE SUPPLEMENT

Cases:

While statutes relating to the same matter or subject are regularly employed as extrinsic aids in interpretation, application of the rule that statutes in pari materia should be construed together is most justified, and light from that source has the greatest probative force, in the case of statutes relating to the same subject matter that were passed at the same session of the legislature, especially if they were passed or approved or take effect on the same day; when both statutes are part of the same bill, enacted and chaptered together, the rule requiring the courts to reconcile the statutes is even more compelling, for neither can be viewed

as an implied repeal of the other. [Eel River Disposal and Resource Recovery, Inc. v. Humboldt](#), 221 Cal. App. 4th 209, 164 Cal. Rptr. 3d 316 (1st Dist. 2013).

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- 1 [Morf v. Bingaman](#), 298 U.S. 407, 56 S. Ct. 756, 80 L. Ed. 1245 (1936).
- 2 [Morf v. Bingaman](#), 298 U.S. 407, 56 S. Ct. 756, 80 L. Ed. 1245 (1936); [City of Richmond v. Board of Sup'rs of Henrico County](#), 199 Va. 679, 101 S.E.2d 641 (1958).
- 3 [Graham v. Goodcell](#), 282 U.S. 409, 51 S. Ct. 186, 75 L. Ed. 415 (1931).
- 4 [Nordyke v. Pastrell](#), 54 Nev. 98, 7 P.2d 598 (1932); [Robertson v. Jackson](#), 183 N.C. 695, 110 S.E. 593 (1922).
- 5 [U. S. Fidelity & Guar. Co. v. Alfalfa Seed & Lumber Co.](#), 38 Ariz. 48, 297 P. 862 (1931).
- 6 [U. S. Fidelity & Guar. Co. v. Alfalfa Seed & Lumber Co.](#), 38 Ariz. 48, 297 P. 862 (1931).
- 7 [S. Buchsbaum & Co. v. Gordon](#), 389 Ill. 493, 59 N.E.2d 832 (1945).

End of Document

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73 Am. Jur. 2d Statutes § 281

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

3. Repeal by Implication

b. Effect of Particular Circumstances

§ 281. Time of operation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  161(1)

The fact that two statutes take effect on the same day is strong evidence that they were intended to stand together.¹ However, the fact that two statutes are, according to their terms, to go into operation at the same time does not preclude the operation of the rule of repeal by implication.² In addition, the later of two inconsistent statutes will prevail although the prior one is not to take effect until a time subsequent to the passage and taking effect of the later one.³

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Footnotes

- 1 U. S. Fidelity & Guar. Co. v. Alfalfa Seed & Lumber Co., 38 Ariz. 48, 297 P. 862 (1931).
- 2 People v. Marxhausen, 204 Mich. 559, 171 N.W. 557, 3 A.L.R. 1505 (1919) (holding modified on other grounds by, People v. Goldston, 470 Mich. 523, 682 N.W.2d 479 (2004)).
- 3 Ex parte Sohncke, 148 Cal. 262, 82 P. 956 (1905).

End of Document

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73 Am. Jur. 2d Statutes § 282

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration


3. Repeal by Implication

b. Effect of Particular Circumstances

§ 282. Invalidity of repealing provision

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  161(1), 168

The general rule is that a void act cannot operate to repeal a valid existing statute; the existing statute remains in full force and operation as if the repeal had never been attempted.¹ In addition, a repeal of a statute will not be implied if an unconstitutional result would be produced thereby.²

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Footnotes

¹ [LaRoque v. Holder](#), 650 F.3d 777 (D.C. Cir. 2011).

² [Reid v. Smoulter](#), 128 Pa. 324, 18 A. 445 (1889).

End of Document

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73 Am. Jur. 2d Statutes § 283

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

3. Repeal by Implication

b. Effect of Particular Circumstances

§ 283. Saving provisions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  160, 161(1), 232

There can be no repeal by implication where the act expressly provides for the continued operation of the prior acts.¹ The function of a saving clause is not to create something but to preserve something from immediate interference.² Hence, a clause saving from repeal an act that is not within the intent but might have appeared to come within the language of the repealing clause merely operates as a proviso and is in no sense a reenactment or extension of the act so excepted.³

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Footnotes

- 1 Ellis v. New Mexico Const. Co., 27 N.M. 312, 201 P. 487 (1921).
- 2 Knickerbocker Ice Co. v. Stewart, 253 U.S. 149, 40 S. Ct. 438, 64 L. Ed. 834, 11 A.L.R. 1145 (1920).
- 3 Commonwealth ex rel. Elkin v. Moir, 199 Pa. 534, 49 A. 351 (1901).

End of Document

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73 Am. Jur. 2d Statutes § 284

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

4. Particular Kinds of Statutes

a. In General

§ 284. Repeal by amendatory or supplementary statutes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  164

An amendment of an act operates as a repeal of provisions of the amended act which are changed by and repugnant to the amendatory act.¹ As to the effect of an omission from an amendatory act of provisions contained in the act amended, as a repeal of the omitted provisions, the result depends on the legislative intent.² If the later act is intended to cover the entire subject and to be a substitute for the earlier act, the omitted parts are deemed to be repealed by implication.³ This is true of an amendment which declares that the earlier statute will read in a particular way.⁴ In such case, the repeal is operative whether there is⁵ or is not an irreconcilable repugnance between the provisions of the two acts.⁶ However, an act will not necessarily be repealed because some or all of its provisions are covered by a later act since the later act may be merely cumulative or auxiliary.⁷

Observation:

Where the legislature supplements or amends an act so as to specify that a beneficiary of the subsequent act may not receive relief under both the prior and subsequent act, there is no conflict between the two statutes, and an implied repeal of the prior act cannot be inferred.⁸

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Footnotes

- 1 [California Employment Commission v. Arrow Mill Co.](#), 45 Cal. App. 2d 668, 114 P.2d 727 (3d Dist. 1941).
- 2 [Posadas v. National City Bank of New York](#), 296 U.S. 497, 56 S. Ct. 349, 80 L. Ed. 351 (1936).
- 3 [Posadas v. National City Bank of New York](#), 296 U.S. 497, 56 S. Ct. 349, 80 L. Ed. 351 (1936).
- 4 [State v. Garland](#), 250 Iowa 428, 94 N.W.2d 122 (1959).
- 5 [Schmalzreid v. White](#), 97 Tenn. 36, 36 S.W. 393 (1896).
- 6 [Cunningham v. Cokely](#), 79 W. Va. 60, 90 S.E. 546 (1916).
- 7 [Chicago, M. & St. P.R. Co. v. U.S.](#), 127 U.S. 406, 8 S. Ct. 1194, 32 L. Ed. 180 (1888); [Collier v. Mitchell](#), 207 Ga. 528, 63 S.E.2d 338 (1951).
- 8 [Wolfchild v. U.S.](#), 96 Fed. Cl. 302 (2010).

End of Document

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73 Am. Jur. 2d Statutes § 285

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

4. Particular Kinds of Statutes

a. In General

§ 285. Repeal of amendatory or supplementary statutes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  161(4)

A later law which is merely a reenactment of a former law does not repeal an intermediate act which has qualified or limited the first one, but the intermediate act will be deemed to remain in force and to qualify or modify the new act in the same manner as it did the first.¹ Similarly, where a new section of a statute is substituted for an old one, other statutory provisions relating to the old one and not inconsistent with the new one remain in force and are applicable to the latter.² These rules are, however, mere canons of construction or aids to the ascertainment of the legislative intent and must yield to such intent.³

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Footnotes

- 1 [Klemme v. Drainage Dist. No. 5 of Crete Tp., 380 Ill. 221, 43 N.E.2d 966 \(1942\).](#)
- 2 [Wheelwright v. Trefry, 235 Mass. 584, 127 N.E. 523, 37 A.L.R. 920 \(1920\).](#)
- 3 [Klemme v. Drainage Dist. No. 5 of Crete Tp., 380 Ill. 221, 43 N.E.2d 966 \(1942\).](#)

End of Document

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73 Am. Jur. 2d Statutes § 286

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

4. Particular Kinds of Statutes

a. In General

§ 286. Codes, revisions, and compilations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  167(.5) to 167(2)

A.L.R. Library

[Effect of simultaneous repeal and re-enactment of all, or part, of legislative act, 77 A.L.R.2d 336](#)

Generally, the omission of a statute from a revision does not affect its repeal although all statutes within the purview of the revision which are not contained within it are expressly repealed by it if no provision in the revision attempts to deal with the subject matter of the omitted statute.¹ This rule is regarded as applicable to provisions of existing law in relation to cases not provided for by the codification.² Whenever there is a general codification of the law on any specific subject, that code supersedes any existing law.³ However, while a code of civil procedure which expressly repeals a former code and "all acts amendatory thereof and supplemental thereto" repeals all acts which expressly amended or supplemented the former code, it does not reach essentially independent enactments that affected the former code only impliedly and incidentally.⁴

When a revised and consolidated act reenacts in the same or substantially the same terms the provisions of the act or acts so revised and consolidated, the revision and consolidation is a continuation of the former act or acts, although the former act or acts may be expressly repealed by the revised and consolidated act, and all rights and liabilities under the former act or acts are preserved and may be enforced.⁵

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Footnotes

- 1 [Hammer v. State](#), 173 Ind. 199, 89 N.E. 850 (1909).
- 2 [Clark v. State](#), 171 Ind. 104, 84 N.E. 984 (1908).
- 3 [Ex parte State Dept. of Revenue](#), 683 So. 2d 980 (Ala. 1996); [Constitution Life Ins. Co. v. M. D. Thompson & Son, Inc.](#), 251 Ark. 784, 475 S.W.2d 165 (1972).
- 4 [Arizona Corp. Commission v. Catalina Foothills Estates](#), 78 Ariz. 245, 278 P.2d 427 (1954).
- 5 [U.S. v. Grainger](#), 346 U.S. 235, 73 S. Ct. 1069, 97 L. Ed. 1575 (1953).

End of Document

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73 Am. Jur. 2d Statutes § 287

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

4. Particular Kinds of Statutes

a. In General

§ 287. Codes, revisions, and compilations—Repeal by implication

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  158, 167(.5) to (2)

As a general rule, the enactment of revisions and codes manifestly designed to embrace an entire subject of legislation operates to repeal former acts dealing with the same subject although there is no repealing clause to that effect. Under this rule, all parts and provisions of the former act or acts that are omitted from the revised act are repealed even though the omission may have been the result of inadvertence. Moreover, the application of the rule is not dependent on the inconsistency or repugnancy of the new legislation and the old.¹

On the other hand, particularly with respect to a mere compilation of laws,² this rule does not prevail where there is no legislative intention to codify or revise the entire matter to which both statutes or both sets of statutes relate and to substitute the later legislation for the old law upon the subject.³ Where a general subject is covered by a code or systematic collection of general rules dealing with the subject in a comprehensive way, a later statute dealing with the general subject is not regarded as superseding the general rules contained in the code or collection.⁴

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Footnotes

- ¹ [King v. Henderson](#), 5 Ariz. App. 95, 423 P.2d 370 (1967).
Courts generally recognize a presumption against repeal of prior laws by implication, but preexisting law may be abrogated by comprehensive revision. [Adams v. City of Tenakee Springs](#), 963 P.2d 1047 (Alaska 1998).

- 2 C.N. Ray Corp. v. Secretary of State, 241 Mich. 457, 217 N.W. 334 (1928).
3 Litchfield v. Roper, 192 N.C. 202, 134 S.E. 651 (1926).
4 U.S. v. Barnes, 222 U.S. 513, 32 S. Ct. 117, 56 L. Ed. 291 (1912).
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End of Document

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73 Am. Jur. 2d Statutes § 288

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

4. Particular Kinds of Statutes

a. In General

§ 288. Codes, revisions, and compilations—General and special provisions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  162, 163, 167(.5) to (2)

Where a statute is intended to cover all the ground of prior ones on the same subject, and revises the entire law on such subject, all prior conflicting laws will be repealed even though they are special acts.¹ However, where the scheme of revision clearly implies a compilation and continuation of existing general laws, together with such changes as are necessary to harmonize them, the revised laws will not operate as a repeal of a special statute which has already engrafted an exception upon the general law.² In addition, a repeal cannot be implied from a failure to include an act in subsequent codes or revisions of statutes where the act in question is a local law confined to certain territorial limits.³

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Footnotes

- ¹ [Andrews v. People](#), 75 Ill. 605, 1874 WL 9306 (1874).
- ² [State ex rel. Gates v. Commissioners of Public Lands](#), 106 Wis. 584, 82 N.W. 549 (1900).
- ³ [City of Florence v. Turbeville](#), 239 S.C. 126, 121 S.E.2d 437, 85 A.L.R.2d 1143 (1961).

End of Document

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73 Am. Jur. 2d Statutes § 289

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

4. Particular Kinds of Statutes

b. Specific, Special, or Local Laws

§ 289. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  162, 163

Constitutions sometimes contain the express provision that the legislature may repeal any existing special or local law.¹ Such a provision permits a special law to be totally repealed by a special law, but it does not permit a special law to be partly repealed by a special law except that the legislature may by a general law expressly repeal all special laws so far as they are inconsistent with it although this may have the effect of leaving other parts of one or more special laws in force and unrepealed.² Moreover, some courts take the view that the reasons for holding that an existing special act may not be amended by adding thereto have no application where it is repealed in whole or in part although by a special act.³

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Footnotes

- ¹ State ex rel. Childs v. Copeland, 66 Minn. 315, 69 N.W. 27 (1896); State v. Lawler, 53 N.D. 278, 205 N.W. 880 (1925).
- ² State ex rel. Childs v. Copeland, 66 Minn. 315, 69 N.W. 27 (1896).
- ³ State v. Prather, 84 Kan. 169, 112 P. 829 (1911).

End of Document

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73 Am. Jur. 2d Statutes § 290

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

4. Particular Kinds of Statutes

b. Specific, Special, or Local Laws

§ 290. Construction of express repeals

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  152, 162, 163

A general act repealing all acts that are inconsistent with its provisions will usually be construed to refer to general statutes alone and not to include special or local laws.¹ However, effect must be given to a general act expressly repealing all prior special laws inconsistent therewith.² Moreover, an express repeal of inconsistent general laws will not warrant an inference that inconsistent special laws are not to be repealed if such an inference would render the repealing act unconstitutional.³

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Footnotes

- 1 [Abbate v. U S, 270 F. 735, 5 Alaska Fed. 39 \(C.C.A. 9th Cir. 1921\); Landers v. Reynolds, 92 R.I. 403, 169 A.2d 367 \(1961\).](#)
- 2 [Louisville Water Co. v. Clark, 143 U.S. 1, 12 S. Ct. 346, 36 L. Ed. 55 \(1892\).](#)
- 3 [Harrington Tp. Road Commission v. Collector of Harrington Tp., 54 N.J.L. 274, 23 A. 666 \(N.J. Sup. Ct. 1892\), aff'd, 55 N.J.L. 327, 26 A. 915 \(N.J. Ct. Err. & App. 1893\).](#)

End of Document

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73 Am. Jur. 2d Statutes § 291

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

4. Particular Kinds of Statutes

b. Specific, Special, or Local Laws

§ 291. Repeal by implication

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  158, 162, 163

Broadly stated, the rule as to repeals implied from repugnancy of provisions applies as between a general and a special or local act.¹ As a general rule, however, to the extent of any irreconcilable conflict, the special or specific provision modifies, qualifies, limits, restricts, excludes, supersedes, controls, and prevails over the general or broad provision.² The special or specific act and the general or broad law stand together, the one as the law of a particular case and the other as the general rule.³ Hence, the special or specific provision is often referred to as an exception to the general or broad provision.⁴ The presumption that a special act is intended to remain in force as an exception to a later general act is especially applicable where both laws are enacted at the same time or about the same time.⁵ These rules prevail where there is no manifestation of a different intent to be found in the statutes.⁶

CUMULATIVE SUPPLEMENT

Cases:

When two provisions of a law are in irreconcilable conflict with one another, the special provision shall prevail and shall be construed as an exception to the general provision. [State v. Barrientos](#), 837 N.W.2d 294 (Minn. 2013).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Connor v. State on Information of Boutwell, 275 Ala. 230, 153 So. 2d 787 \(1963\).](#)
- 2 [Edmond v. U.S., 520 U.S. 651, 117 S. Ct. 1573, 137 L. Ed. 2d 917 \(1997\); Atlantic Richfield Co. v. Farm Credit Bank of Wichita, 226 F.3d 1138 \(10th Cir. 2000\); O'Callaghan v. Rue, 996 P.2d 88 \(Alaska 2000\).](#)
- 3 [Partee v. St. Louis & S.F.R. Co., 204 F. 970 \(C.C.A. 8th Cir. 1913\); Connor v. State on Information of Boutwell, 275 Ala. 230, 153 So. 2d 787 \(1963\).](#)
- 4 [Baltimore Nat. Bank v. State Tax Commission of Md., 297 U.S. 209, 56 S. Ct. 417, 80 L. Ed. 586 \(1936\).](#)
- 5 [Rodgers v. U.S., 37 Ct. Cl. 552, 185 U.S. 83, 22 S. Ct. 582, 46 L. Ed. 816 \(1902\).](#)
- 6 [U.S. v. Winslow, 227 U.S. 202, 33 S. Ct. 253, 57 L. Ed. 481 \(1913\); Wetherill v. Bank IV Kansas, N.A., 145 F.3d 1187, 35 U.C.C. Rep. Serv. 2d 1091 \(10th Cir. 1998\); Mann v. State, 273 Ga. 366, 541 S.E.2d 645 \(2001\).](#)

End of Document

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73 Am. Jur. 2d Statutes § 292

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

4. Particular Kinds of Statutes

b. Specific, Special, or Local Laws

§ 292. Repeal by implication—Repeal of general or broad statute by special or specific statute

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  163

It is well settled that a special or specific law repeals an earlier general or broad law to the extent of any irreconcilable conflict between their provisions.¹ The special or specific statute operates to engraft on the prior general statute an exception to the extent of the conflict.² Hence, a statute enacted for the primary purpose of dealing with a particular subject, prescribing terms and conditions covering the subject matter, supersedes a general statute which does not refer to that subject although broad enough to cover it.³ However, such a construction should be applied with caution, and to have this effect, the subsequent special or specific act should be plainly irreconcilable with the provisions of the prior general or broad law.⁴ Of course, even in the case of an irreconcilable inconsistency, the general or broad statute is not necessarily repealed in its entirety.⁵

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Footnotes

- 1 U.S. v. Matthews, 34 Ct. Cl. 543, 173 U.S. 381, 19 S. Ct. 413, 43 L. Ed. 738 (1899); State ex rel. Green v. Foote, 35 Del. 514, 168 A. 245 (1933).
- 2 State ex rel. Green v. Foote, 35 Del. 514, 168 A. 245 (1933); State Highway Commission v. Hemphill, 269 N.C. 535, 153 S.E.2d 22 (1967).
- 3 Mennemeyer v. Hart, 359 Mo. 423, 221 S.W.2d 960 (1949); State ex rel. Kearns v. Rindsfoos, 161 Ohio St. 60, 53 Ohio Op. 2, 118 N.E.2d 138, 43 A.L.R.2d 1316 (1954).
- 4 George v. City of Asheville, 80 F.2d 50, 103 A.L.R. 568 (C.C.A. 4th Cir. 1935).

5 [Ex parte Walker](#), 11 Cal. 2d 464, 80 P.2d 990, 117 A.L.R. 825 (1938).

End of Document

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73 Am. Jur. 2d Statutes § 293

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

4. Particular Kinds of Statutes

b. Specific, Special, or Local Laws

§ 293. Repeal by implication—Repeal of special or specific statute by general or broad statute

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  162

There is no rule which prohibits the repeal by implication of a special or specific act by a general or broad one.¹ Thus, a special or specific act must yield to the later general or broad act where there is a manifest legislative intent that the general act shall be of universal application notwithstanding the prior special or specific act.² It is, however, equally true that the policy against implied repeals has peculiar and special force when the conflicting provisions which are thought to work a repeal are contained in a special or specific act and a later general or broad act.³ As the United States Supreme Court has stated, a statute dealing with a narrow, precise, and specific subject is not submerged by a later enacted statute covering a more generalized spectrum.⁴ Hence, a general law does not repeal a special law unless such repeal is expressly stated or clearly arises from the legislative intent.⁵

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Footnotes

- 1 [People v. McCann](#), 247 Ill. 130, 93 N.E. 100 (1910); [Troy Conference Academy and Green Mountain Junior College v. Town of Poultney](#), 115 Vt. 480, 66 A.2d 2 (1949).
- 2 [Town of Palm Beach v. Palm Beach Local 1866 of Intern. Ass'n of Fire Fighters](#), 275 So. 2d 247 (Fla. 1973); [Southern Ry. Co. v. City of Raleigh](#), 9 N.C. App. 305, 176 S.E.2d 21 (1970), decision *aff'd*, 277 N.C. 709, 178 S.E.2d 422 (1971).
- 3 [U.S. v. United Continental Tuna Corp.](#), 425 U.S. 164, 96 S. Ct. 1319, 47 L. Ed. 2d 653 (1976); [Connor v. State on Information of Boutwell](#), 275 Ala. 230, 153 So. 2d 787 (1963).

- 4 National Ass'n of Home Builders v. Defenders of Wildlife, 551 U.S. 644, 127 S. Ct. 2518, 168 L. Ed. 2d 467 (2007).
- 5 Diaz-Ramos v. Hyundai Motor Co., 501 F.3d 12 (1st Cir. 2007).

End of Document

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73 Am. Jur. 2d Statutes § 294

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

4. Particular Kinds of Statutes

c. Penal Statutes

(1) In General

§ 294. Repeal by implication

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  161(1)

The rule of statutory construction that repeals by implication are not favored and will not be indulged if there is any other reasonable construction is applicable to statutes relating to crimes.¹ However, if a criminal statute deals with the same subject as a prior act and is inconsistent with and repugnant to the prior act, the earlier statute will be repealed by implication to the extent of the inconsistency.² This rule is applied where the new statute changes the penalty³ as by decreasing the punishment.⁴ An amendment prescribing for a particular kind of crime a greater punishment than was prescribed by the statute thereby amended does not operate as a repeal of the earlier provision, so far as pending prosecutions or criminal liability for a violation committed prior to the effective date of the amendment are concerned, and the earlier provision prescribing punishment remains in force as to offenses committed prior to the time the amendment becomes effective and may thereafter be applied to the prosecution and sentencing of such prior offenders.⁵ However, the common-law rule, which prevailed for many years, is to the effect that the repeal of a criminal statute operates to terminate all pending prosecutions; according to this view, between the time of the repeal and the effective date of the new law, there is no law in effect under which a defendant can be tried.⁶

CUMULATIVE SUPPLEMENT

Cases:

Because courts interpret an amendment of a penal statute to constitute an implicit repeal where amended sections of a statute are inconsistent with the earlier provisions, and deem a punishment, penalty or forfeiture to be incurred at the time the offense for which punishment is imposed is committed, a newly enacted penal statute is presumptively prospective. [M.G.L.A. c. 4, § 6. *Watts v. Com.*, 468 Mass. 49, 8 N.E.3d 717 \(2014\).](#)

To the extent that a statute, enacted after an initiative is approved for circulation but prior to its passage, limits the effect of the later-adopted initiative, the statute is impliedly repealed. [Mo. Const. art. 3, § 49. *Earth Island Institute v. Union Electric Company*, 456 S.W.3d 27 \(Mo. 2015\).](#)

[END OF SUPPLEMENT]

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Footnotes

- 1 [U.S. v. Gilliland](#), 312 U.S. 86, 61 S. Ct. 518, 85 L. Ed. 598 (1941); [Edwards v. U.S.](#), 814 F.2d 486 (7th Cir. 1987).
- 2 [State v. McClellan](#), 155 La. 37, 98 So. 748, 31 A.L.R. 527 (1923); [State v. London](#), 156 Me. 123, 162 A.2d 150 (1960).
- 3 [State v. Davidson](#), 78 Idaho 553, 309 P.2d 211 (1957).
- 4 [People v. Oliver](#), 1 N.Y.2d 152, 151 N.Y.S.2d 367, 134 N.E.2d 197 (1956); [Atchley v. State](#), 1970 OK CR 76, 473 P.2d 286 (Okla. Crim. App. 1970).
As to an ex post facto analysis with respect to legislation that mitigates or reduces punishment for crimes, see [Am. Jur. 2d, Constitutional Law § 706](#).
- 5 [Sekt v. Justice's Court of San Rafael Tp.](#), 26 Cal. 2d 297, 159 P.2d 17, 167 A.L.R. 833 (1945).
- 6 [State v. Cline](#), 135 Mont. 372, 339 P.2d 657 (1959).
As to the invalidity, as ex post facto legislation, of provisions which operate to increase or enhance punishment for crimes committed before their enactment, see [Am. Jur. 2d, Constitutional Law §§ 698 to 705](#).

End of Document

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73 Am. Jur. 2d Statutes § 295

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

4. Particular Kinds of Statutes

c. Penal Statutes

(1) In General

§ 295. Simultaneous repeal and reenactment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  149, 150, 161(3)

A.L.R. Library

[Effect of simultaneous repeal and re-enactment of all, or part, of legislative act, 77 A.L.R.2d 336](#)

The general rule that where a statute is repealed and all or some of its provisions are at the same time reenacted, the reenactment neutralizes the repeal, and the provisions of the repealed act which are thus reenacted continue in force without interruption so that all rights and liabilities which have accrued thereunder are preserved and may be enforced¹ is applicable to legislation relating to crimes.²

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Footnotes

¹ [§ 271.](#)

2 [Forbes v. Board of Health of Escambia County, 27 Fla. 189, 9 So. 446 \(1891\)](#); [Borough of Langhorne Manor v. Clayton, 129 Pa. Super. 557, 196 A. 584 \(1938\)](#).

End of Document

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73 Am. Jur. 2d Statutes § 296

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

4. Particular Kinds of Statutes

c. Penal Statutes

(2) Prospective or Retrospective Operation

§ 296. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  149, 150, 158

It is with reference to statutes defining crimes and providing for their punishment that repeals operate with utmost freedom.¹ Abatement of prosecutions by repeal of the criminal statutes includes a statute's repeal and reenactment with different penalties even when the penalty is reduced.² In such cases, the extinction of the statute is understood to be an indication that the sovereign power no longer desires the former crime to be punished or regarded as criminal,³ and the general rule at common law is that when such a statute is repealed, all proceedings pending or subsequently instituted thereunder are nullified.⁴ Even a plea of guilty before the repeal⁵ or a conviction of the defendant before the repeal of the statute does not authorize an imposition of sentence by the court after the repeal.⁶ Moreover, if a penal statute is repealed pending an appeal or writ of error and before the final action of the appellate court, it will prevent an affirmance of a conviction and the prosecution must be dismissed or the judgment reversed.⁷ When such a statute is repealed, it is as if it never existed except for the purpose of proceedings previously commenced, prosecuted, and concluded.⁸

CUMULATIVE SUPPLEMENT

Cases:

Generally, if the Legislature amends a criminal statute by mitigating the punishment after the commission of a prohibited act but before final judgment, the punishment is that provided by the amendatory act unless the Legislature specifically provided otherwise; if a defendant appeals his or her sentence, then the sentence is not a final judgment until the entry of a final mandate. *State v. Duncan*, 291 Neb. 1003, 870 N.W.2d 422 (2015).

[END OF SUPPLEMENT]

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Footnotes

- 1 *City of Monmouth v. Lawson*, 345 Ill. App. 44, 102 N.E.2d 188 (2d Dist. 1951); *State v. Spencer*, 177 S.C. 346, 181 S.E. 217 (1935).
- 2 *Bradley v. U.S.*, 410 U.S. 605, 93 S. Ct. 1151, 35 L. Ed. 2d 528 (1973).
- 3 *Walker v. Commonwealth*, 192 Ky. 257, 232 S.W. 617 (1921); *People v. Oliver*, 1 N.Y.2d 152, 151 N.Y.S.2d 367, 134 N.E.2d 197 (1956).
- 4 *U.S. v. Curtiss-Wright Export Corporation*, 299 U.S. 304, 57 S. Ct. 216, 81 L. Ed. 255 (1936); *People v. Alexander*, 178 Cal. App. 3d 1250, 224 Cal. Rptr. 290 (6th Dist. 1986).
- 5 *City of Monmouth v. Lawson*, 345 Ill. App. 44, 102 N.E.2d 188 (2d Dist. 1951); *State v. Spencer*, 177 S.C. 346, 181 S.E. 217 (1935).
- 6 *State v. Perkins*, 141 N.C. 797, 53 S.E. 735 (1906).
- 7 *U.S. v. Schooner Peggy*, 5 U.S. 103, 2 L. Ed. 49, 1801 WL 1069 (1801); *State v. Spencer*, 177 S.C. 346, 181 S.E. 217 (1935).
- 8 *Tinder v. U.S.*, 345 U.S. 565, 73 S. Ct. 911, 97 L. Ed. 1250 (1953); *Ex parte Jerry*, 294 Mich. 689, 293 N.W. 909, 132 A.L.R. 89 (1940).

End of Document

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73 Am. Jur. 2d Statutes § 297

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

4. Particular Kinds of Statutes

c. Penal Statutes

(2) Prospective or Retrospective Operation

§ 297. Effect of absence of specific repeal

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  149, 150, 152

The prospective or retrospective effect of a repeal of a statute relating to a crime has been regarded as the same when a statute is repealed by implication as when it is expressly repealed.¹ However, on the ground that there can be no repugnancy between the later and earlier act except as to offenses punishable under the later act, which are offenses committed after the effective date of the later act, the earlier act remains in force as to offenses committed before the repeal and such offenses are punishable under the earlier act notwithstanding the repeal.²

CUMULATIVE SUPPLEMENT

Cases:

Defendant convicted of acting as an outfitter without a license was not entitled to be sentenced under revised statute in effect at time he was charged and subsequently convicted, rather than prior version of statute in effect at time he committed offenses; Legislature had not reduced the penalty for his crimes in the revised statute, as revised version of statute did not ameliorate or repeal misdemeanor punishment for outfitting without a license but instead merely shifted penalty provisions to another title. MCA 37-47-301, 37-47-344; MCA 87-3-116(1, 2) (Repealed). [State v. Kebble, 2015 MT 195, 353 P.3d 1175 \(Mont. 2015\)](#).

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S. v. Tynen, 78 U.S. 88, 20 L. Ed. 153, 1870 WL 12873 (1870); Abbott v. Commonwealth, 8 Watts 517, 1839 WL 3635 (Pa. 1839).
- 2 State v. Perkins, 141 N.C. 797, 53 S.E. 735 (1906).

End of Document

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73 Am. Jur. 2d Statutes § 298

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

4. Particular Kinds of Statutes

c. Penal Statutes

(2) Prospective or Retrospective Operation

§ 298. Effect of saving clause

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  278.23

Where a repealing statute contains a saving clause as to crimes committed prior to the repeal, or as to pending prosecutions, the offender may be tried and punished under the old law.¹ In such case, the crime is punishable under the old statute although no prosecution is pending at the time that the new statute goes into effect.² It is frequently provided in a general saving law that the trial of an offense will be under the law in force at the time when the offense was committed, or that the repeal of a statute will not release or extinguish any penalty, or that no new law will be construed to repeal a former one as to an offense committed or penalty or punishment incurred under the former law unless the repealing act expressly so provides.³ In all cases to which such a general statute is applicable, it is to be read as a proviso to the repealing act,⁴ and the offender may be tried and punished under the old law.⁵ A general saving law applies only to statutes enacted by the legislature and cannot save an act from falling because of the adoption of a constitutional amendment.⁶

Under a constitutional saving clause providing that the repeal of a statute will not affect any accrued right, or penalty incurred, or proceedings begun by virtue of the repealed statute, the repeal of a statute prescribing the punishment for an offense after final judgment has been pronounced and, while an appeal therefrom is pending, does not in any respect vacate or modify the judgment or arrest the execution of the sentence where the judgment is affirmed.⁷

Similarly, where amendatory legislation carries a saving clause as to prior offenses or there exists in the local statutes or constitution a general saving provision broad enough to apply to instances of amendments increasing punishment, the law as it stood at the time of the offense is applied to the prosecution and sentencing of the violator.⁸

CUMULATIVE SUPPLEMENT

Cases:

Although new laws that reduce the punishment for a crime are presumptively to be applied to defendants whose judgments are not yet final, that presumption does not govern when the statute at issue includes a "saving clause" providing that the amendment should be applied only prospectively. [People v. Conley](#), 63 Cal. 4th 646, 203 Cal. Rptr. 3d 622, 373 P.3d 435 (2016).

Because the [Estrada rule](#), 48 Cal.Rptr. 172, that an ameliorative change to a criminal law is presumed to apply retroactively reflects a presumption about legislative intent, rather than a constitutional command, the Legislature may choose to modify, limit, or entirely forbid the retroactive application of ameliorative criminal-law amendments if it so chooses; if the Legislature wishes to do so, it must clearly signal its intent to make the amendment prospective, by the inclusion of either an express saving clause or its equivalent. [People v. Sims](#), 59 Cal. App. 5th 943, 273 Cal. Rptr. 3d 792 (4th Dist. 2021).

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Footnotes

- 1 [People v. Bank of San Luis Obispo](#), 159 Cal. 65, 112 P. 866 (1910); [State v. Matthews](#), 131 Vt. 521, 310 A.2d 17 (1973).
- 2 [State v. Lorenzy](#), 59 Wash. 308, 109 P. 1064 (1910).
- 3 [U.S. v. Chambers](#), 291 U.S. 217, 54 S. Ct. 434, 78 L. Ed. 763, 89 A.L.R. 1510 (1934).
- 4 [U.S. v. Reisinger](#), 128 U.S. 398, 9 S. Ct. 99, 32 L. Ed. 480 (1888).
- 5 [U.S. v. Reisinger](#), 128 U.S. 398, 9 S. Ct. 99, 32 L. Ed. 480 (1888); [Western Union Telegraph Co. v. State](#), 82 Ark. 309, 101 S.W. 748 (1907).
- 6 [U.S. v. Chambers](#), 291 U.S. 217, 54 S. Ct. 434, 78 L. Ed. 763, 89 A.L.R. 1510 (1934).
- 7 [Alberty v. State](#), 1914 OK CR 48, 10 Okla. Crim. 616, 140 P. 1025 (1914).
- 8 [People v. Ostrowski](#), 293 Ill. 91, 127 N.E. 379 (1920); [State v. Lindsey](#), 194 Wash. 129, 77 P.2d 596 (1938).

End of Document

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73 Am. Jur. 2d Statutes § 299

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VII. Suspension and Expiration

B. Expiration

4. Particular Kinds of Statutes

c. Penal Statutes

(2) Prospective or Retrospective Operation

§ 299. Effect of saving clause—Federal savings statute

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  278.23

Under the general federal savings statute,¹ the repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.² The savings statute adopts a general rule that the penalty incurred is that provided by the statute in effect at the time of the conduct unless the superseding statute provides otherwise.³

The savings statute may be overridden either by express declaration or necessary implication or when a new statute can be said by fair implication or expressly to conflict with the savings statute.⁴

Observation:

The general federal savings statute⁵ is not a presumption or indicator of subjective intent: it is a binding rule that overturns common-law abatement and governs the meaning that courts are to give to the superseding statute unless otherwise affirmatively directed.⁶

CUMULATIVE SUPPLEMENT

Cases:

"Repeal," as used in the general saving statute, which provides that a new criminal statute that repeals an older criminal statute shall not change the penalties incurred under that older statute unless the repealing act shall so expressly provide, applies when a new statute simply diminishes the penalties that the older statute set forth. [1 U.S.C.A. § 109](#). [Dorsey v. U.S., 132 S. Ct. 2321 \(2012\)](#).

Penalties are "incurred," for purposes of the general saving statute, which provides that a new criminal statute that repeals an older criminal statute shall not change the penalties incurred under that older statute unless the repealing act shall so expressly provide, when an offender becomes subject to them, i.e., commits the underlying conduct that makes the offender liable. [1 U.S.C.A. § 109](#). [Dorsey v. U.S., 132 S. Ct. 2321 \(2012\)](#).

The general saving statute, which provides that a new criminal statute that repeals an older criminal statute shall not change the penalties incurred under that older statute unless the repealing act shall so expressly provide, permits Congress to apply a new act's more lenient penalties to pre-act offenders without expressly saying so in the new act. [1 U.S.C.A. § 109](#). [Dorsey v. U.S., 132 S. Ct. 2321 \(2012\)](#).

Under the background principle of interpretation set forth in the general saving statute, which provides that a new criminal statute that repeals an older criminal statute shall not change the penalties incurred under that older statute unless the repealing act shall so expressly provide, courts, before interpreting a new criminal statute to apply its new penalties to a set of pre-act offenders, must assure themselves that ordinary interpretive considerations point clearly in that direction. [1 U.S.C.A. § 109](#). [Dorsey v. U.S., 132 S. Ct. 2321 \(2012\)](#).

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Footnotes

- 1 [1 U.S.C.A. § 109](#).
- 2 [U.S. v. Goncalves, 642 F.3d 245 \(1st Cir. 2011\)](#), cert. denied, [132 S. Ct. 596](#), 181 L. Ed. 2d 437 (2011).
- 3 [U.S. v. Goncalves, 642 F.3d 245 \(1st Cir. 2011\)](#), cert. denied, [132 S. Ct. 596](#), 181 L. Ed. 2d 437 (2011).
If there is ambiguity about a repealing statute's retroactive reach, then the general saving statute provides that the law at the time of the offense governs. [U.S. v. Santana, 761 F. Supp. 2d 131 \(S.D. N.Y. 2011\)](#).
- 4 [U.S. v. Douglas, 644 F.3d 39 \(1st Cir. 2011\)](#).
- 5 [1 U.S.C.A. § 109](#).
- 6 [U.S. v. Goncalves, 642 F.3d 245 \(1st Cir. 2011\)](#), cert. denied, [132 S. Ct. 596](#), 181 L. Ed. 2d 437 (2011).

End of Document

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73 Am. Jur. 2d Statutes VIII Refs.

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VIII. Extension and Revival

[Topic Summary](#) | [Correlation Table](#)

Research References

A.L.R. Library

A.L.R. Index, Statutes

West's A.L.R. Digest, [Statutes](#)  [51](#), [147](#), [169](#), [170](#)

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End of Document

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73 Am. Jur. 2d Statutes § 300

American Jurisprudence, Second Edition | May 2021 Update

Statutes

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VIII. Extension and Revival

§ 300. Generally; revival by reference

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#) 51, 170

Generally speaking, a legislature may revive or extend an act by any form of words that makes clear its intention so to do.¹ Under some constitutional provisions, where an act is revived, such act must be reenacted and published at length. The primary purpose of such a provision is to prevent the legislature from accidentally or intentionally misleading the public regarding the precise action taken in a given enactment.²

As a rule, when the legislature approves unconstitutional statutory language while simultaneously repealing the predecessor statute, the judicial act of striking the new statutory language automatically revives the predecessor statute unless it too would be unconstitutional. However, this rule generally is applicable only where the loss of the invalid statutory language would result in a hiatus in the law that would be intolerable to society.³

In the absence of constitutional inhibitions, a repealed statute may sometimes be revived by a mere reference thereto in the new statute.⁴ However, the general rule is that where a statute is repealed without a reenactment of the repealed law in substantially the same terms, and there is no saving clause or a general statute limiting the effect of the repeal, the repealed statute, in regard to its operative effect, is considered as if it had never existed,⁵ and reference in a legislative act to a repealed law, as supplementary or explanatory of the new law, is regarded as an absurdity.⁶ In any event, legislative acts should not receive a construction operative to revive repealed statutes by mere reference thereto where such effect does not clearly appear to have been the intention of the legislature.⁷

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Footnotes

¹ [In re Grand Jury Subpoenas Duces Tecum](#), 78 F.3d 1307 (8th Cir. 1996).

- 2 [Gilmore v. Landside, 252 Va. 388, 478 S.E.2d 307 \(1996\).](#)
- 3 [B.H. v. State, 645 So. 2d 987, 46 A.L.R.5th 877 \(Fla. 1994\).](#)
- 4 [Lyles v. McCown, 82 S.C. 127, 63 S.E. 355 \(1909\).](#)
- 5 [§ 256.](#)
- 6 [State v. O'Brien, 95 Ohio St. 166, 115 N.E. 25 \(1917\).](#)
- 7 [State ex rel. Metropolitan Thoroughfare Authority of Marion County v. Nutting, 246 Ind. 105, 203 N.E.2d 192 \(1964\).](#)

End of Document

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73 Am. Jur. 2d Statutes § 301

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VIII. Extension and Revival

§ 301. Effect of repeal of repealing statute

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  169

A familiar common law rule is that when a repealing statute is itself repealed, the first statute is revived without formal words for that purpose, in the absence of any contrary intention expressly declared or necessarily to be implied from the enactment or some general statute.¹ However, the repeal of a repealing act cannot effect the revival of any previous act which is repugnant to the provisions of the last repealing act.² The rule as to the revival of a repealed act by the repeal of the repealing act is regarded as applicable only to express repeals of the earlier repealing act and not to repeals by implication.³ The rule has also been denied application in a case where the first repealing law repealed absolutely the prior existing law and substituted for it another and more comprehensive scheme of legislation, which undertook to deal with the whole subject to which the prior statute related⁴ nor does the rule apply where a local or special law is repealed by another local or special law, and the latter is subsequently repealed, if there is a general law governing the subject.⁵ In any event, where the repealing act is repealed before it takes effect, its repeal does not affect the original act in any way, it never having actually become inoperative.⁶

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Footnotes

- 1 U.S. v. Philbrick, 120 U.S. 52, 7 S. Ct. 413, 30 L. Ed. 559 (1887); Gallegos v. Atchison, T. & S. F. R. Co., 28 N.M. 472, 214 P. 579 (1923).
- 2 Converse v. U.S., 62 U.S. 463, 21 How. 463, 16 L. Ed. 192, 1858 WL 9328 (1858).
- 3 Com. v. Scott, 287 Pa. 392, 135 A. 225 (1926).
- 4 Warren v. Suttles, 190 Ga. 311, 9 S.E.2d 172 (1940).
- 5 In re Knox St. Opening, 12 Pa. Super. 534, 1900 WL 5080 (1900).
- 6 Clark v. Reynolds, 136 Ga. 817, 72 S.E. 254 (1911).

End of Document

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73 Am. Jur. 2d Statutes § 302

American Jurisprudence, Second Edition | May 2021 Update

Statutes

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VIII. Extension and Revival

§ 302. Effect of repeal of repealing statute—Effect of statutory modifications of common-law rule

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  169

By statute in some jurisdictions, it is provided in effect that the repeal of a repealing statute will not operate to revive the original statute.¹ In fact, federal law provides that whenever an act is repealed, which repealed a former act, such former act is not thereby revived unless it is expressly so provided.² Thus, the general rule of revival does not apply where the act subsequently repealed was not a repealing act but merely suspended certain cases from the operation of an earlier statute³ or merely amended an earlier statute.⁴ In any event, the statutory prohibition of the revival of a repealed act by the repeal of the repealing act does not control where there is express provision,⁵ or an intention clearly indicated, that the original statute should be revived.⁶

Observation:

The Uniform Statute and Rule Construction Act provides that the repeal of a repealing statute or rule does not revive the statute or rule originally repealed or impair the effect of a savings clause in the original repealing statute or rule.⁷

Footnotes

- 1 U.S. v. Philbrick, 120 U.S. 52, 7 S. Ct. 413, 30 L. Ed. 559 (1887); Lily Lake Road Defenders v. County of McHenry, 156 Ill. 2d 1, 188 Ill. Dec. 773, 619 N.E.2d 137 (1993); In re MCI Telecommunications Complaint, 460 Mich. 396, 596 N.W.2d 164 (1999).
- 2 1 U.S.C.A. § 108.
- 3 Ventura County v. Barry, 202 Cal. 550, 262 P. 1081 (1927).
- 4 City of Hannibal v. Guyott, 18 Mo. 515, 1853 WL 4637 (1853).
- 5 State ex rel. First Sav. & Trust Co. of Tampa v. Sholtz, 125 Fla. 361, 169 So. 849 (1936).
- 6 Manlove v. White, 8 Cal. 376, 1857 WL 839 (1857).
- 7 Unif. Statute and Rule Construction Act § 15.

End of Document

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73 Am. Jur. 2d Statutes § 303

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VIII. Extension and Revival

§ 303. Revival of law by expiration of constitutional provision

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#) 51

Where Congress has legislated upon a subject which is within its constitutional control and over which it has the right to assume exclusive jurisdiction and has manifested its intention to deal therewith in full, the authority of the states is necessarily excluded, and any state legislation on the subject is void. The relative importance to the state of its own law is not material where there is a conflict with a valid federal law; any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law must yield.¹ The operation of the state statute, however, may be revived without reenactment upon the termination of the federal regulation.²

Care must be taken to distinguish between a state statute which was once valid but later pronounced inappropriate under a federal constitutional amendment, and one that was enacted after the amendment was adopted and then declared to be void because in conflict therewith since the latter type of statute never validly existed.³

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Footnotes

- ¹ [Am. Jur. 2d, Constitutional Law § 232.](#)
- ² [Missouri Pac. R. Co. v. Boone, 270 U.S. 466, 46 S. Ct. 341, 70 L. Ed. 688 \(1926\).](#)
- ³ [Atkinson v. Southern Exp. Co., 94 S.C. 444, 78 S.E. 516 \(1913\).](#)

End of Document

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73 Am. Jur. 2d Statutes § 304

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

VIII. Extension and Revival

§ 304. Effect of compilation or revision

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  147

A.L.R. Library

[Legislative adoption of compiled or revised statutes as giving effect to former repealed or suspended provisions included therein, 12 A.L.R.2d 423](#)

Unless there are indications that the case is one of inadvertence,¹ or the language of the adopting act is appropriately limited or shows a legislative intention merely to place in convenient form statutes actually in force, the inclusion of a prior repealed or suspended statute in compiled or revised statutes adopted by a legislature will give such repealed or suspended statute effect as law, no constitutional provision preventing.² However, embodying in the United States Code a statutory provision previously superseded by a later enactment of the subject does not operate to reinstate such provision.³ Where a general compilation or code includes two conflicting sections or provisions carried forward from prior enacted statutes, the rule is that that section or provision prevails which is considered the last expression of the lawmaking power, the other being rejected as impliedly a repealed law and of no present effect.⁴ If the case is merely that of a compilation or code recognized, encouraged, assisted, or given some sanction or authorization, but not subsequently approved or adopted by the legislature, the inclusion therein of a prior repealed or suspended provision could not possibly operate to place it in effect as present law.⁵

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Footnotes

- 1 [Hillsborough County Com'rs v. Jackson](#), 58 Fla. 210, 50 So. 423 (1909).
- 2 [Ex parte Haley](#), 1949 OK 218, 202 Okla. 101, 210 P.2d 653, 12 A.L.R.2d 416 (1949) (noting that the vital question in such a case is not what the codifier was empowered to do but what the legislature intended to do with his work and that such intention could only be gathered from what the legislature itself had deliberately declared when it passed upon the work reported to it).
- 3 [Stephan v. U.S.](#), 319 U.S. 423, 63 S. Ct. 1135, 87 L. Ed. 1490 (1943).
- 4 [Building Supplies Corporation v. Willcox](#), 284 F. 113 (C.C.A. 4th Cir. 1922).
- 5 [Spokane, P. & S. Ry. Co. v. Franklin County](#), 106 Wash. 21, 179 P. 113 (1919).

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73 Am. Jur. 2d Statutes IX A Refs.

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

IX. Statutory Rights and Remedies

A. In General

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Statutes](#) 🔑 176, 181(2)

A.L.R. Library

A.L.R. Index, Statutes

West's A.L.R. Digest, [Statutes](#) 🔑 176, 181(2)

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73 Am. Jur. 2d Statutes § 305

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Statutes

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IX. Statutory Rights and Remedies

A. In General

§ 305. Right of action predicated upon violation of statutory duty

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  176, 181(2)

The violation of a statutory provision containing a mandate to do an act for the benefit of another, or a prohibition against the doing of an act which may be to his or her injury, is generally regarded as giving rise to a liability and creating a private right of action whenever the other elements essential to a recovery are present.¹ This is true regardless of actual negligence on the part of the violator of the statute.² In this respect, every person has a right to insist that no provision of any law shall be violated so as to work peculiar harm to him or her.³ However, the mere fact that a statute grants a power to do a particular thing does not create a liability for damage caused by reason of the failure to exercise such power.⁴

CUMULATIVE SUPPLEMENT

Cases:

The creation of a private right of action raises issues beyond the mere consideration whether underlying primary conduct should be allowed or not, entailing, for example, a decision to permit enforcement without the check imposed by prosecutorial discretion. [RJR Nabisco, Inc. v. European Community](#), 136 S. Ct. 2090 (2016).

A private right of action under federal law is not created by mere implication, but must be unambiguously conferred. (Per Justice Scalia, with three Justices concurring and one Justice concurring in the judgment.) [Armstrong v. Exceptional Child Center, Inc.](#), 135 S. Ct. 1378 (2015).

The second step for a court determining whether a statute gives rise to an implied right of action is to examine the statutory structure within which the provision in question is embedded, keeping in mind the cardinal principle that a statute ought, upon

the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant. [Alabama v. PCI Gaming Authority](#), 801 F.3d 1278 (11th Cir. 2015).

Insurer, which was a Medicare Advantage Organization (MAO), could only bring action against "primary plan," not beneficiaries of Medicare plan, under Private Cause of Action provision of Medicare Act, and thus insurer could not maintain action against insured and insured's personal injury attorneys seeking reimbursement for medical expenses, after insured settled personal injury suit with her employer; language of the provision was unambiguous regarding definition of primary plan, which did not include beneficiaries, and to Private Cause of Action's double recovery of damages, which would give insurer greater ability to recover than government, which was only entity permitted sue beneficiaries and their attorneys and was only entitled to single, not double, recovery. Social Security Act § 1862, [42 U.S.C.A. §§ 1395y\(b\)\(1\)\(A\)\(ii\), 1395y\(b\)\(3\)\(A\)](#); [42 C.F.R. §§ 411.24, 422.108\(f\)](#). [Aetna Life Insurance Company v. Guerrero](#), 300 F. Supp. 3d 367 (D. Conn. 2018).

Whether a statutory violation may be enforced through § 1983 is a different inquiry from that involved in determining whether a private right of action can be implied from a particular statute; however, the two inquiries overlap significantly to the extent that an unambiguous congressional intent to confer an individual right is a prerequisite for both. [42 U.S.C.A. § 1983](#). [Gann v. Richardson](#), 43 F. Supp. 3d 896 (S.D. Ind. 2014).

Minnesota Professional Firms Act (MPFA) does not include an express private cause of action, nor implied private right of action. M.S.A. § 319B.01. [Liberty Mutual Fire Ins. Co. v. Acute Care Chiropractic Clinic P.A.](#), 88 F. Supp. 3d 985 (D. Minn. 2015).

If the language is not conclusive, a court determining if a federal statute creates a private right of action may consider whether: (1) the plaintiff falls within the class the statute was enacted to benefit; (2) there is evidence of any legislative intent to create or to deny a private right of action; (3) a private right of action is consistent with the purposes of the legislative scheme; and (4) the area of law is one traditionally relegated to state law. [Bais Yaakov of Spring Valley v. Alloy, Inc.](#), 936 F. Supp. 2d 272 (S.D. N.Y. 2013).

Under New York law, three essential factors govern a court's inquiry into whether a statute creates an implied right of action: (1) whether a plaintiff is one of the class for whose particular benefit the statute was enacted; (2) whether recognition of a private right of action would promote the legislative purpose; and (3) whether creation of such a right would be consistent with the legislative scheme. [Lesesne v. Brimecome](#), 918 F. Supp. 2d 221 (S.D. N.Y. 2013).

New York insurance law making it unlawful for an insurer doing business in New York to engage in unfair claim settlement practices did not provide a private right of action. [N.Y. Insurance Law § 2601](#). [Violet Realty, Inc. v. Affiliated FM Insurance Company](#), 267 F. Supp. 3d 384 (W.D. N.Y. 2017).

Statute providing that persons arrested or in custody were to be provided with medical treatment if required, and that anyone receiving medical treatment while held in custody could be assessed a medical treatment charge, did not create implied private right of action in favor of public hospital to recover payment, from city, for medical expenses incurred for treatment of patient for self-inflicted gunshot wound which was sustained during police investigation into reported domestic disturbance at patient's home; statute focused solely on rights and duties of confining state entity with respect to person in custody, not third parties who might incidentally assist detaining government in fulfilling its statutory duties; overruling [Poudre Valley Health Care Inc. v. City of Loveland](#), 85 P.3d 558. [Colo. Rev. Stat. Ann. § 16-3-401](#). [City of Arvada ex rel. Arvada Police Department v. Denver Health and Hospital Authority](#), 2017 CO 97, 403 P.3d 609 (Colo. 2017).

If a statute is totally silent on the matter of remedy for a statutory violation, for the purposes of determining whether a plaintiff has standing to sue under the statute, then the court must determine whether a private civil remedy reasonably may be implied, and to answer this question, the court must examine three factors: (1) whether the plaintiff is within the class of persons intended to be benefited by the legislative enactment; (2) whether the legislature intended to create, albeit implicitly, a private right of

action; and (3) whether an implied civil remedy would be consistent with the purposes of the legislative scheme. [Taxpayers for Public Education v. Douglas County School District](#), 2015 CO 50, 351 P.3d 461 (Colo. 2015).

Statute requiring state agencies to obtain approval from Georgia Technology Authority regarding pilot projects for business and transactions using electronic media does not provide a private right of action. West's [Ga.Code Ann. § 50–29–12](#). [Best Jewelry Mfg. Co., Inc. v. Reed Elsevier Inc.](#), 334 Ga. App. 826, 780 S.E.2d 689 (2015).

When a legislative provision protects a class of persons by proscribing or requiring certain conduct but does not provide a civil remedy for the violation, the court may create a new cause of action in favor of an injured member of the class using a suitable existing tort action or a new cause of action analogous to an existing tort action; the court may create a cause of action if the remedy is appropriate in furtherance of the purpose of the legislation and needed to assure the effectiveness of the provision. [Restatement \(Second\) of Torts § 874A](#). [Hopper v. Swinnerton](#), 317 P.3d 698 (Idaho 2013).

Landowners, who alleged that flooding of their land was caused by city, had no private cause of action for negligence per se under the Flood Control Act; Act was designed to protect the general public and contained an enforcement mechanism and remedies for violation of the duty. West's [A.I.C. 13–2–22–13](#) (Repealed). [Brown v. City of Valparaiso](#), 67 N.E.3d 652 (Ind. Ct. App. 2016).

Former employee, who used medical marijuana to treat Crohn's disease and was fired for testing positive for marijuana, did not have implied private right of action under medical marijuana law against former employer for adverse employment action arising from use of medical marijuana, where there was no indication in voter information booklet, that was sent to each registered voter before election that included medical marijuana initiative petition, that voters understood that they would be creating private right of action through passage of initiative, and there was existing cause of action under statute prohibiting handicap discrimination. [Mass. Gen. Laws Ann. ch. 151B, § 4\(16\)](#); St. 2012, c. 369, § 4. [Barbuto v. Advantage Sales and Marketing, LLC](#), 477 Mass. 456, 78 N.E.3d 37 (2017).

There is no private cause of action to compel a police commissioner to issue a replacement retired officer identification card, which allows the retired officer to carry a concealed firearm across state lines. [18 U.S.C.A. § 926C](#); [M.G.L.A. c. 140, § 131\(r\)](#); 501 CMR 13.01 et seq. [Frawley v. Police Com'r of Cambridge](#), 46 N.E.3d 504 (Mass. 2016).

Even if the Legislature does not expressly create a statutory private cause of action, it may provide one by clear implication. [Graphic Communications Local 1B Health & Welfare Fund A v. CVS Caremark Corp.](#), 850 N.W.2d 682 (Minn. 2014).

Whether a statute creates a private right of action depends on the statute's purpose and whether the Legislature intended to create a private right of action. [Pettit v. Nebraska Department of Correctional Services](#), 291 Neb. 513, 867 N.W.2d 553 (2015).

Statute setting out mandatory medical malpractice liability insurance coverage for physicians does not expressly or impliedly create a private right of action for an injured patient to sue a physician who does not obtain or maintain statutorily-required medical malpractice insurance. [N.J.S.A. 45:9–19.17](#), 13:35–6.18. [Jarrell v. Kaul](#), 223 N.J. 294, 123 A.3d 1022 (2015).

Implying a right of action for civil damages for violations of statute governing management of correctional facilities was not warranted, where inmate grievance program existed to address inmates' complaints and allegations of discriminatory treatment in such facilities and implying such a right was not consistent with legislative scheme. [N.Y. Correction Law §§ 112, 112\(1\), 137\(5\), 138\(4\)](#); [N.Y. Comp. Codes R. & Regs. tit. 7, § 701.1](#). [Jones v. State](#), 171 A.D.3d 1362, 98 N.Y.S.3d 366 (3d Dep't 2019).

Private right of action was not fairly implied by statutes setting forth procedures governing parole, thus precluding the existence of a special relationship, as required for inmate to assert a claim against Board of Parole alleging a due process violation and seeking damages based on the Board's alleged failure to satisfy its statutory obligation to establish written procedures for use in making parole release determinations; inmates had recourse under article 78 to address perceived instances where the Board

did not satisfy its statutory obligations in making parole determinations, so that it was fair to infer that the legislature would have specifically created a private right of action had it intended to do so. [U.S. Const. Amend. 14](#); [N.Y. CPLR § 7803](#); [N.Y. Executive Law §§ 259-c\(4\), 259-i](#). [Franza v. State](#), 164 A.D.3d 971, 83 N.Y.S.3d 361 (3d Dep't 2018).

When considering whether a statute creates a cause of action, courts consider the following: (1) whether the plaintiff is within the class for whose especial benefit the statute was enacted; (2) whether legislative intent, explicitly or implicitly, supports creating or denying a remedy; and (3) whether implying a remedy is consistent with the underlying purpose of the legislation. [Frias v. Asset Foreclosure Services, Inc.](#), 334 P.3d 529 (Wash. 2014).

The following is the appropriate test to determine when a State statute gives rise by implication to a private cause of action: (1) the plaintiff must be a member of the class for whose benefit the statute was enacted; (2) consideration must be given to legislative intent, express or implied, to determine whether a private cause of action was intended; (3) an analysis must be made of whether a private cause of action is consistent with the underlying purposes of the legislative scheme; and (4) such private cause of action must not intrude into an area delegated exclusively to the federal government. [Appalachian Regional Healthcare, Inc. v. West Virginia Dept. of Health and Human Resources](#), 752 S.E.2d 419 (W. Va. 2013).

Implied private cause of action may exist for a violation by an insurance company of the unfair settlement practice provisions of the Unfair Trade Practices Act (UTPA), but such implied private cause of action cannot be maintained until the underlying suit is resolved. [West's Ann.W.Va.Code, 33–11–4\(9\)](#). [Lemasters v. Nationwide Mut. Ins. Co.](#), 751 S.E.2d 735 (W. Va. 2013).

The following is the appropriate test to determine when a State statute gives rise by implication to a private cause of action: (1) the plaintiff must be a member of the class for whose benefit the statute was enacted; (2) consideration must be given to legislative intent, express or implied, to determine whether a private cause of action was intended; (3) an analysis must be made of whether a private cause of action is consistent with the underlying purposes of the legislative scheme; and (4) such private cause of action must not intrude into an area delegated exclusively to the federal government. [Fucillo v. Kerner ex rel. J.B.](#), 744 S.E.2d 305 (W. Va. 2013).

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Footnotes

- 1 [Tipton v. Atchison, T. & S.F. Ry. Co.](#), 298 U.S. 141, 56 S. Ct. 715, 80 L. Ed. 1091, 104 A.L.R. 831 (1936).
An implied statutory cause of action is premised on the assumption that the legislature would not specifically grant rights to a class of persons, in a statute, without enabling members of that class to enforce those rights.
[Adams v. King County](#), 164 Wash. 2d 640, 192 P.3d 891 (2008).
- 2 [St. Joseph & G.I. Ry. Co. v. Moore](#), 243 U.S. 311, 37 S. Ct. 278, 61 L. Ed. 741 (1917).
- 3 [Wheeler-Stenzel Co. v. National Window Glass Jobbers' Ass'n](#), 152 F. 864 (C.C.A. 3d Cir. 1907).
- 4 [White v. Chowan County Com'rs](#), 90 N.C. 437, 1884 WL 1849 (1884).

End of Document

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73 Am. Jur. 2d Statutes § 306

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Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

IX. Statutory Rights and Remedies

A. In General

§ 306. Nature and basis of statutory liability

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  176, 181(2)

The test of whether an individual injured by the violation of a statute may recover damages from the wrongdoer is whether the legislature intended to give such right.¹ While in some cases statutes expressly impose personal liability on persons or entities for a violation of the provisions thereof or the failure to perform specified duties,² the absence of express provision for civil liability in case of the violation of a statute does not negative the existence of a legislative intent that the statute shall affect private rights.³ Sometimes, the violation of the statute is regarded as actionable in and of itself on the theory of a nuisance⁴ or on the theory of negligence per se.⁵

The question whether a statute creates a private right of action is ultimately one of congressional intent, not one of whether the court thinks that it can improve upon the statutory scheme that Congress enacted into law.⁶ In order to determine whether Congress intended to create a private right of action in a particular statute, the court will consider, among other factors, the language and focus of the statute, its legislative history, and its purpose; where the court concludes that each of these factors points to the conclusion that Congress did not intend to create a private right of action, it is unnecessary to consider the fourth factor of whether the cause of action is one traditionally relegated to state law.⁷ In determining whether a plaintiff has an implied private remedy available to enforce a federal statutory provision, the relevant factors are: (1) whether the plaintiff is one of the class for whose especial benefit the statute was enacted—that is, whether the statute creates a federal right in favor of the plaintiff; (2) whether there is any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one; (3) whether it is consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff; and (4) whether the cause of action is one that is traditionally relegated to state law, in an area basically the concern of the states, so that it would be inappropriate to infer a cause of action based solely on federal law.⁸

CUMULATIVE SUPPLEMENT

Cases:

If the statute itself does not display an intent to create a private remedy, then a cause of action does not exist and courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute; judicial task is instead limited solely to determining whether Congress intended to create the private right of action asserted. [Ziglar v. Abbasi](#), 137 S. Ct. 1843 (2017).

Just as a court cannot apply its independent policy judgment to recognize a cause of action that Congress has denied, it cannot limit a cause of action that Congress has created merely because "prudence" dictates; abrogating [Elk Grove Unified School Dist. v. Newdow](#), 542 U.S. 1, 124 S.Ct. 2301, 159 L.Ed.2d 98; [Allen v. Wright](#), 468 U.S. 737, 104 S.Ct. 3315, 82 L.Ed.2d 556. [Lexmark Intern., Inc. v. Static Control Components, Inc.](#), 134 S. Ct. 1377 (2014).

The structure of a statute indicates congressional intent to create a federal private cause of action when the statute focuses on individual, rather than aggregate effects. [Stenger v. Bi-State Development Agency of Missouri/Illinois Metropolitan Dist.](#), 808 F.3d 734 (8th Cir. 2015).

Under California law, the legislative determination as to how far to extend a statutorily created right of action is conclusive, unless it appears beyond rational doubt that an arbitrary discrimination between persons or classes similarly situated has been made without any reasonable cause therefor. [Medrano v. Kern County Sheriff's Officer](#), 921 F. Supp. 2d 1009 (E.D. Cal. 2013).

Although an amendment to § 1981 in the Civil Rights Act of 1991, adding language protecting rights against impairment under color of state law, plainly contemplates creation of substantive rights protecting individuals against discrimination by government actors, it is silent on how those rights will be enforced; thus, absent a showing of clear statement of Congress that such a right was intended, no implied private right of action against state actors exists beyond that provided in § 1983. 42 U.S.C.A. §§ 1981(c), 1983. [Smith v. Metropolitan Dist. Com'n](#), 105 F. Supp. 3d 185 (D. Conn. 2015).

Under District of Columbia law, no independent cause of action exists for violation of the statutory requirements for a notice of foreclosure. D.C. Official Code, 2001 Ed. § 42–815. [Robinson v. Deutsche Bank Nat. Trust Co.](#), 932 F. Supp. 2d 95 (D.D.C. 2013).

Insured patient had private right of action under the Health Care and Consumer Billing and Disclosure Protection Act, which prohibited hospital from collecting or attempting to collect from an insured patient any amount owed by the health insurer or in excess of the contracted reimbursement rate, to bring class action against hospital for engaging in balance billing; the action was distinct from the administrative scheme in the Act. LSA–R.S. 22:1877. [Anderson v. Ochsner Health System](#), 172 So. 3d 579 (La. 2014).

Prompt Pay Law creates implied private right of action by health care provider or patient against insurer that violates law, by providing insurer "shall be obligated to pay" provider or patient, in full settlement of claim for health care services, amount of claim plus interest if insurer fails timely to pay claim, notify claimant of reason for denial, or request more information; private right of action is fully consistent with legislative scheme, which is directed not to protecting general public but to protecting providers and patients from individual harm caused by late payment. [McKinney's Insurance Law § 3224–a\(c\)\(1\)](#). [Maimonides Medical Center v. First United American Life Ins. Co.](#), 981 N.Y.S.2d 739 (App. Div. 2d Dep't 2014).

The following is the appropriate test to determine when a State statute gives rise by implication to a private cause of action: (1) the plaintiff must be a member of the class for whose benefit the statute was enacted; (2) consideration must be given to legislative intent, express or implied, to determine whether a private cause of action was intended; (3) an analysis must be made of whether a private cause of action is consistent with the underlying purposes of the legislative scheme; and (4) such private

cause of action must not intrude into an area delegated exclusively to the federal government. [Durham v. Jenkins](#), 735 S.E.2d 266 (W. Va. 2012).

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Footnotes

- 1 [Richmond v. Warren Institution for Savings](#), 307 Mass. 483, 30 N.E.2d 407, 132 A.L.R. 859 (1940); [Schmidt v. Merchants Despatch Transp. Co.](#), 270 N.Y. 287, 200 N.E. 824, 104 A.L.R. 450 (1936).
Recognition of any private right of action for violating a federal statute must ultimately rest on congressional intent to provide a private remedy. [Astra USA, Inc. v. Santa Clara County, Cal.](#), 131 S. Ct. 1342, 179 L. Ed. 2d 457 (2011).
The violation of a statute creates no civil liability unless that statute indicates an intent to create a cause of action. [Wheeler v. DePuy Spine, Inc.](#), 706 F. Supp. 2d 1264 (S.D. Fla. 2010).
- 2 [Story Parchment Co. v. Paterson Parchment Paper Co.](#), 282 U.S. 555, 51 S. Ct. 248, 75 L. Ed. 544 (1931).
- 3 [Texas & N.O.R. Co. v. Brotherhood of Ry. & S.S. Clerks](#), 281 U.S. 548, 50 S. Ct. 427, 74 L. Ed. 1034 (1930).
- 4 [Am. Jur. 2d, Explosions and Explosives § 26.](#)
- 5 [Am. Jur. 2d, Negligence §§ 685 to 690.](#)
- 6 [Universities Research Ass'n, Inc. v. Coutu](#), 450 U.S. 754, 101 S. Ct. 1451, 67 L. Ed. 2d 662 (1981).
- 7 [Universities Research Ass'n, Inc. v. Coutu](#), 450 U.S. 754, 101 S. Ct. 1451, 67 L. Ed. 2d 662 (1981).
- 8 [Suter v. Artist M.](#), 503 U.S. 347, 112 S. Ct. 1360, 118 L. Ed. 2d 1 (1992).

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73 Am. Jur. 2d Statutes § 307

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Statutes

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IX. Statutory Rights and Remedies

A. In General

§ 307. Determination of legislative intent

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  176, 181(2)

The legislative intent to grant or withhold a private right of action for the violation of a statute, or the failure to perform a statutory duty, is determined primarily from the language of the statute.¹ The purpose the statute was intended to accomplish may also be taken into consideration.² In this respect, the general rule is that a statute which does not purport to establish a civil liability but merely makes provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing a civil liability.³ The question of whether a liability arising from the breach of a duty prescribed by statute accrues for the benefit of an individual specially injured thereby, or whether such liability is exclusively of a public character, depends upon the nature of the duty imposed and the benefits to be derived from its performance.⁴

CUMULATIVE SUPPLEMENT

Cases:

When the Legislature has expressly created specific remedies, a court should always hesitate to recognize another unmentioned remedy. [Jarrell v. Kaul](#), 223 N.J. 294, 123 A.3d 1022 (2015).

The legislature's statutory silence in failing to expressly provide a private right of action is a strong indication it did not intend such a remedy for an alleged violation of the statute. [Empower the Taxpayer v. Fong](#), 2012 ND 119, 817 N.W.2d 381 (N.D. 2012).

[END OF SUPPLEMENT]

Footnotes

- 1 Universities Research Ass'n, Inc. v. Coutu, 450 U.S. 754, 101 S. Ct. 1451, 67 L. Ed. 2d 662 (1981); Georgetown County League of Women Voters v. Smith Land Co., Inc., 393 S.C. 350, 713 S.E.2d 287 (2011).
- 2 Universities Research Ass'n, Inc. v. Coutu, 450 U.S. 754, 101 S. Ct. 1451, 67 L. Ed. 2d 662 (1981).
- 3 Conway v. Monidah Trust Co., 47 Mont. 269, 132 P. 26 (1913).
- 4 Fairport, P. & E.R. Co. v. Meredith, 292 U.S. 589, 54 S. Ct. 826, 78 L. Ed. 1446 (1934).

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73 Am. Jur. 2d Statutes § 308

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Statutes

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IX. Statutory Rights and Remedies

A. In General

§ 308. Persons who may maintain suit

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  176, 181(2)

Where a statute names the parties granted the right to invoke its provisions, such parties only may act.¹ Generally, persons entitled to take advantage of a given law are members of the class intended to be protected by the statute or for whose benefit the statute was enacted.² Indeed, even though the violation of a statute is regarded as actionable, it is generally required that the injury be done to one of the class designed to be protected by the statute or for whose benefit the statute was enacted³ and to whom a duty of compliance with the statute is owed.⁴ It is of course a question of construction as to whether a particular class of persons is intended to be protected by particular statutes.⁵ In this respect, the object of a statute,⁶ the nature of the duty imposed by a statute, and the benefits resulting from its performance determine what persons are entitled to invoke its protection.⁷ Where the statute gives or creates a right of action unknown to the common law, it will be strictly construed when determining the persons or classes of persons who are entitled to its benefit.⁸

Where a statute gives a cause of action and designates the persons who may sue, the general rule is that none but the persons so designated have the right to bring the action.⁹

CUMULATIVE SUPPLEMENT

Cases:

Mortgagor failed to adequately allege that District of Columbia statute setting forth recording requirements for transfers of deeds of trust authorized private right of action for damages, as required to state claim against mortgagee's nominee, lawyer serving as substitute trustee, and law firm for failing to properly assign deed of trust to mortgagee; statute did not expressly confer private right of action, but rather imposed only monetary fine for violators, and mortgagor provided no analysis demonstrating

an implied private right of action. D.C. Official Code, 2001 Ed. § 47–1431. *Koker v. Aurora Loan Servicing, LLC*, 915 F. Supp. 2d 51 (D.D.C. 2013).

[END OF SUPPLEMENT]

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Footnotes

- 1 *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 120 S. Ct. 1942, 147 L. Ed. 2d 1 (2000).
- 2 *Cooper v. Baltimore & O.R. Co.*, 159 F. 82 (C.C.A. 6th Cir. 1908); *Donaldson v. Great Atlantic & Pacific Tea Co.*, 186 Ga. 870, 199 S.E. 213, 128 A.L.R. 456 (1938).
- 3 *Union Pac. Ry. Co. v. McDonald*, 152 U.S. 262, 14 S. Ct. 619, 38 L. Ed. 434 (1894); *Holmes v. Back Doctors, Ltd.*, 695 F. Supp. 2d 843, 76 Fed. R. Serv. 3d 250 (S.D. Ill. 2010).
- 4 *Toomey v. Southern Pac. R. Co.*, 86 Cal. 374, 24 P. 1074 (1890).
- 5 *Randall v. Baltimore & O.R. Co.*, 109 U.S. 478, 3 S. Ct. 322, 27 L. Ed. 1003 (1883).
- 6 *Suter v. Artist M.*, 503 U.S. 347, 112 S. Ct. 1360, 118 L. Ed. 2d 1 (1992).
- 7 *Fairport, P. & E.R. Co. v. Meredith*, 292 U.S. 589, 54 S. Ct. 826, 78 L. Ed. 1446 (1934).
- 8 *Whittlesey v. City of Seattle*, 94 Wash. 645, 163 P. 193 (1917).
- 9 *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 120 S. Ct. 1942, 147 L. Ed. 2d 1 (2000).

End of Document

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73 Am. Jur. 2d Statutes § 309

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.


IX. Statutory Rights and Remedies

A. In General

§ 309. Parties defendant and persons subject to action

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  176, 181(2)

Generally, a statutory right of action may be maintained only against persons upon whom the duty prescribed by the statute is placed.¹ In some cases, liability of a party may be predicated upon the failure of his or her agent to comply with a particular statutory duty.² On the other hand, sometimes, liability for injuries resulting from the failure to comply with statutory provisions is imposed upon agents³ and lessees.⁴

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Footnotes

- ¹ [Toomey v. Southern Pac. R. Co.](#), 86 Cal. 374, 24 P. 1074 (1890).
- ² [Corell v. Williams & Hunting Co.](#), 173 Iowa 571, 155 N.W. 982 (1916).
- ³ [Gardner v. Smith](#), 7 Mich. 410, 1859 WL 5206 (1859).
- ⁴ [Illinois Cent. R. Co. v. Kanouse](#), 39 Ill. 272, 1866 WL 4393 (1866).

End of Document

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73 Am. Jur. 2d Statutes IX B Refs.

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

IX. Statutory Rights and Remedies

B. Requisites, Restrictions, and Defenses

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Statutes](#) 🔑176, 181(2)

A.L.R. Library

A.L.R. Index, Statutes

West's A.L.R. Digest, Statutes 🔑289.2

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73 Am. Jur. 2d Statutes § 310

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

IX. Statutory Rights and Remedies

B. Requisites, Restrictions, and Defenses

§ 310. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  176, 181(2)

A cause of action which is purely statutory will be strictly construed. A plaintiff asserting a cause of action thereunder must in his or her pleading bring him- or herself clearly within the statute.¹ Provisos and exceptions in statutes granting a cause of action create a limitation on the right to sue and are to be regarded as conditions precedent.² In addition, proof simply of the violation of a statute does not establish a right of recovery.³ These rules should not, however, be applied so as to deny a party recourse to the remedy in a proper case.⁴ Moreover, it is no defense to an action based upon the violation of a statutory obligation that the statute has been generally violated.⁵

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Footnotes

- 1 [Am. Jur. 2d, Actions § 52.](#)
- 2 [State, for Use of Dunnigan v. Cobourn, 171 Md. 23, 187 A. 881, 107 A.L.R. 1045 \(1936\).](#)
- 3 [St. Louis, I.M. & S. Ry. Co. v. McWhirter, 229 U.S. 265, 33 S. Ct. 858, 57 L. Ed. 1179 \(1913\).](#)
- 4 [Walters v. Bank of America Nat. Trust & Savings Ass'n, 9 Cal. 2d 46, 69 P.2d 839, 110 A.L.R. 1259 \(1937\).](#)
- 5 [Gately v. Taylor, 211 Mass. 60, 97 N.E. 619 \(1912\).](#)

End of Document

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73 Am. Jur. 2d Statutes § 311

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.


IX. Statutory Rights and Remedies

B. Requisites, Restrictions, and Defenses

§ 311. Acts or omissions of injured party

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  176, 181(2)

The right to maintain an action predicated upon the failure to perform a statutory obligation may be precluded by the failure of the victim to perform an act which was obligatory and which would have averted the injury.¹ Furthermore, there is authority to the effect that the civil action granted by law for the redress of an injury proximately resulting from the violation of a statutory duty is only maintainable by a person who himself or herself is not a partaker in the wrong of which he or she complains.²

Subject to several recognized exceptions, a violation of a statute by the person injured may be considered on the issue of his or her negligence and if such conduct endangered the person or contributed to his or her injury such a violation appears, as a general rule, to be available as a defense in an action for negligence.³

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Footnotes

¹ [Lang v. New York Cent. R. Co.](#), 255 U.S. 455, 41 S. Ct. 381, 65 L. Ed. 729 (1921).

² [Lepard v. Michigan Cent. R. Co.](#), 166 Mich. 373, 130 N.W. 668 (1911).

³ [Am. Jur. 2d, Negligence § 854.](#)

End of Document

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73 Am. Jur. 2d Statutes § 312

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.


IX. Statutory Rights and Remedies

B. Requisites, Restrictions, and Defenses

§ 312. Causal relationship of violation and injury

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  176, 181(2)

In general, the violation of the statute must be a proximate cause of the injury if liability is to be predicated thereon.¹ In determining what constitutes proximate cause where the alleged wrongful act consists of a violation of a statutory duty, principles prevailing in cases of the violation of a nonstatutory duty may be applied.² A person is not necessarily absolved from the consequences of his or her failure to perform a statutory duty because there was another efficient cause contributing to the injury.³ The test is found not in the existence or number of intervening events or agents but in their character and natural and probable consequences.⁴ Sometimes, the right to recover damages resulting from the violation of a statute gives a right of action to one injured by such violation, even though the injury is removed from the unlawful act by an intermediate cause, where the defendant might reasonably anticipate that the injury might thus result.⁵ In addition, it is a fundamental rule that to warrant recovery for the breach of a statutory duty, the violation must have been a *causa sine qua non*, a cause without which the injury would not have taken place.⁶

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Footnotes

- 1 [Davis v. Wolfe](#), 263 U.S. 239, 44 S. Ct. 64, 68 L. Ed. 284 (1923).
- 2 [Larsen v. Webb](#), 332 Mo. 370, 58 S.W.2d 967, 90 A.L.R. 67 (1932).
- 3 [Wilmington Star Mining Co. v. Fulton](#), 205 U.S. 60, 27 S. Ct. 412, 51 L. Ed. 708 (1907).
- 4 [Milbury v. Turner Center System](#), 274 Mass. 358, 174 N.E. 471, 73 A.L.R. 1070 (1931).
- 5 [Evans v. Chicago & N.W. Ry. Co.](#), 109 Minn. 64, 122 N.W. 876 (1909) (overruled in part on other grounds by, [Strobel v. Chicago, R. I. & P. R. Co.](#), 255 Minn. 201, 96 N.W.2d 195 (1959)).
- 6 [Hayes v. Michigan Cent. R. Co.](#), 111 U.S. 228, 4 S. Ct. 369, 28 L. Ed. 410 (1884).

End of Document

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73 Am. Jur. 2d Statutes § 313

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

IX. Statutory Rights and Remedies

B. Requisites, Restrictions, and Defenses

§ 313. Exposure to hazards contemplated by legislature

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  176, 181(2)

While there are some cases in which the injured person has been regarded as entitled to recover although he or she was engaged in a task not designed to be protected by the statute,¹ nevertheless, to maintain a civil action based upon the violation of a statute, the injury must generally have been caused by exposure to a hazard from which it was the purpose of the statute to give protection.² If the very injury has occurred which the statute was intended to prevent, the injury must be considered as proximately caused by the nonobservance of the law.³ In addition, the violation of a statute is not rendered remote as the cause of an injury by the intervention of another agency if the occurrence of the accident, in the manner in which it happened, is the very thing which the statute is intended to prevent.⁴

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Footnotes

- 1 [Swinson v. Chicago, St. P., M. & O. Ry. Co.](#), 294 U.S. 529, 55 S. Ct. 517, 79 L. Ed. 1041, 96 A.L.R. 1136 (1935); [Davis v. Wolfe](#), 263 U.S. 239, 44 S. Ct. 64, 68 L. Ed. 284 (1923).
- 2 [New York Cent. & H.R.R. Co. v. Price](#), 159 F. 330 (C.C.A. 1st Cir. 1908).
- 3 [Janof v. Newsom](#), 53 F.2d 149 (App. D.C. 1931).
- 4 [Norman v. Virginia-Pocahontas Coal Co.](#), 68 W. Va. 405, 69 S.E. 857 (1910) (overruled in part on other grounds by, [Pitzer v. M. D. Tomkies & Sons](#), 136 W. Va. 268, 67 S.E.2d 437 (1951)).

End of Document

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73 Am. Jur. 2d Statutes Correlation Table

American Jurisprudence, Second Edition | May 2021 Update

Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

[Topic Summary](#)**Correlation Table****Statutes****2001**1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40**2012**§1
§2
§3
§4
§5
DELETED
§6
§7
§8
§9
§10
§11
§12
§13
§14
§15
§16
§17
§18
§19
§20
§21
§22
§23
§24
§25
§26
§27
DELETED
§28
§29
§30
§31
§32
§33
§34
§35
§36
§37
§38

41	§39
42	§40
43	§41
44	§42
45	§43
46	§43
46	§44
47	§45
48	§46
49	§47
50	§48
51	§49
52	§50
53	§51
54	§52
55	§53
56	§54
57	§55
58	§56
59	§57
60	§58
61	§59
62	§60
63	§61
64	§62
65	§63
66	§64
67	§65
68	§66
69	§67
70	§68
71	§69
72	§70
73	§71
74	§72
75	§73
76	§74
77	§75
78	§76
79	§77
80	§78
81	§79
82	§80
83	§81
84	§82
85	§83
86	§83
87	§84
88	DELETED
89	§85
90	§86
91	§87
92	DELETED
93	§88
94	§89
95	§90
96	§91
97	DELETED

98	DELETED
99	DELETED
100	§92
101	§93
102	§94
103	§95
104	DELETED
105	§96
106	§97
107	§98
108	§99
109	§100
110	§101
111	§102
112	§103
113	§104
114	§105
115	§106
115	§107
116	§107
117	§108
118	§109
119	§110
120	§111
121	§112
122	§113
123	§114
124	§115
125	§116
126	§117
127	§118
128	§119
129	§120
130	§121
131	§122
132	§123
133	§124
134	§125
135	§126
136	§127
137	§128
138	§129
139	§130
140	§131
141	§132
142	§133
143	§134
144	§135
145	§136
146	§137
147	§138
148	§139
149	§140
150	§141
151	§142
152	§143
153	§144
154	§145

155	§146
156	§147
157	§148
158	§149
159	§150
160	§151
161	§152
162	§153
163	§154
164	§155
165	§156
166	§157
167	§158
168	§159
169	§160
170	§161
171	§162
172	§163
173	§164
174	§165
175	§166
176	§167
177	§168
178	§169
179	§170
180	§171
181	§172
182	§173
183	§174
184	§175
185	§176
186	§177
187	§178
188	§179
189	§180
190	§181
191	§182
192	§183
193	§184
194	§185
195	§186
196	§187
197	§188
198	§189
199	§190
200	§191
201	§192
202	§193
203	§194
204	§195
205	§196
206	§197
207	§198
208	§199
209	§200
210	§201
211	§202
212	§203

213	§204
214	§205
215	§206
216	§207
217	§208
218	§209
219	§210
220	§211
221	§212
222	§213
223	§214
224	§215
225	§216
226	§217
227	§218
228	§219
229	§220
230	§221
231	§222
232	§223
233	§224
234	§225
235	§226
236	§227
237	§228
238	§229
239	§230
240	§231
241	§232
242	§233
243	§234
244	§235
245	DELETED
246	§239
247	§240
248	DELETED
249	§242
250	§243
251	§244
252	§245
253	§246
254	§247
255	§248
256	§249
257	§250
258	§251
259	§252
260	§253
261	§254
262	§255
263	§256
264	§257
265	§258
266	§259
267	§260
268	§261
269	§262
270	§263

271	§264
272	§265
273	§266
274	§267
275	§268
276	§269
277	§270
278	§271
279	§272
280	§273
281	§274
282	§275
283	§276
284	§277
285	§278
286	§279
287	§280
288	§281
289	§282
290	§283
291	§284
292	§285
293	§286
294	§287
295	§288
296	§289
297	§290
298	§291
299	§292
300	§293
301	§294
302	§295
303	§296
304	§297
305	§298
306	§300
307	§301
308	§302
309	§303
310	§304
311	§305
312	§306
313	§307
314	§308
315	§309
316	§310
317	§311
318	§312
319	§313

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